

W. H.

1888
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Mining Rights in Colorado.
SIXTH EDITION.



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MINING RIGHTS

IN COLORADO.

LODE AND PLACER CLAIMS

POSSESSORY AND PATENTED,

FROM THE DISTRICT ORGANIZATIONS TO
THE PRESENT TIME.

STATUTES IN FULL.

PROSPECTING, LAND OFFICE, INCORPORATIONS,
FORMS, DECISIONS, ETC.

BY
R. S. MORRISON AND JACOB FILLIUS,
OF THE COLORADO BAR.

SIXTH EDITION.

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MINING RIGHTS.

MINING DISTRICT RULES.

Origin of the Mining Districts and of the District Rules.—Before the organization of Colorado as a Territory, (February 28, 1861), the principal mineral sections had been settled and a system of miners' laws established, the outlines of which have been the basis of all subsequent legislation.

The country was divided into "Mining Districts," some less than a mile square and some quite extensive, which have become permanent geographical divisions, and take the place of townships and sections in describing the situation of real estate of all kinds in the mining counties.

There are at least two hundred in Clear Creek, Gilpin, Boulder, Summit, Park and Lake, but the names of some of the less important have been dropped, and are familiar only to early settlers.

Each District Adopted a Separate Code of Regulations, and elected a Recorder, who kept a record of claims and transfers; and usually a judge and other

NOTE—*Contractions*—*R. S.*—Revised Statutes of the United States, edition of 1878.

A. C.—Act of Congress.

G. S.—General Statutes of Colorado, Ed. of 1883.

M. R.—Morrison's Mining Reports.

L. O.—Copp's Land Owner, &c., &c.

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officers who carried out the mining rules and also enforced the decisions of the jury of miners or the miners' meeting.

The written regulations usually first defined the name and boundaries of the district; second, the number and kind of officers to be elected from time to time; and then proceeded to designate what number of feet should constitute a claim in that district, the amount of surface allowed, the amount of work required to hold a claim, &c., and sometimes extended further, to the mode in which mining controversies and other difficulties should be settled.

These district regulations were recognized at the first session of the Territorial Legislature and by all the subsequent Acts of Congress; when not in conflict with statutory law, especially in cases arising out of the early discoveries, they may still be regarded as in force and occasionally important. They are supposed to be filed at present in the office of the county recorder, and a search among them is sometimes necessary to the lawyer and always refreshing to those who are curious in regard to pioneer customs.

Scope of their Legislation.—This system of the miners was, of course, molded upon customs already established in California, and many of the California mining rules were identical with provisions of the Mexican law.

The subdivision of a deposit into claims; the allowance of an additional "claim" to the discoverer; the staking of claims; the requirement of a discovery shaft; forfeiture for neglect to work, and various other prominent features are found to be set forth at large in the Spanish and Mexican codes.

But their day, practically, has ended and given place to uniform legislation; and, notwithstanding their recognition in Acts of Congress, they seem to be always made

subject to State or Territorial laws, and void when in opposition thereto.

From the defects of these original regulations and the want of an exact and uniform mining code, have sprung most of the points of litigation now commonly spoken of, and for which the miners have only themselves to blame. In some districts lawyers were, by their own laws, forbidden to reside or practice.

Instances of their Form and Contents.—The rules of the various districts being more or less uniform in their mode of expression, and in the matters regulated by them, we give a citation of rules from sundry districts, from which some idea of their scope and intention may be formed.

Boundaries.—This district shall be defined and bounded as follows: Commencing at the head of the canyon on the Las Animas River at the lower end of what is called and known as Baker's Park, and thence running east to the summit of the main dividing range, and then following said range around so as to include all the waters of said river, to the place of beginning.—*Art. 2, Las Animas District.*

Size of Claims.—All claims made on lodes by discovery shall be 200 feet long and 50 feet wide; all pre-emption claims 100 feet long and 50 feet wide; all discovery claims on patch diggings shall be 100 feet square; pre-emption claims 100 feet square; all discovery claims on gulch diggings shall be 100 feet long and from bank to bank; pre-emption claims shall be the same; all water claims and steam mill sites shall be 300 feet long up and down the stream, and 150 feet wide; all claims shall be taken by numbers, commencing at the discovery and running each way.—*Art. 8, Grand Island District.*

Value of Labor.—There shall be allowed for a day's labor on all lodes, the following prices: For working in loose rock and earth, twelve dollars per day; for hard rock, such as will require powder and drills, sixteen dollars per day.—*Resolution 3, Las Animas District.*

Lode Notice.—That all notices on lodes be written in plain English and posted in some conspicuous place on the lode.—*Resolution 8, Las Animas District.*

Sheriff—It shall be the duty of the Sheriff to serve all papers issued by the President, and to be a General Peace Officer.—*Art. 6, Coral District.*

Water.—In all gulches or ravines where water may be scarce, the oldest claimants shall have preference and priority of right to water.—*Art. 5, Downieville District.*

Fictitious Locators.—Be it further enacted, that no claims shall be regarded as valid, pre-empted or recorded, in fictitious or false names, nor by persons not residents of the Territory, except the same are made in good faith.—*Sec. 13, Lincoln District.*

Forfeiture.—Any person absenting himself from this mining region twelve months, shall forfeit his claims, except when they are represented by an agent.—*Sec. 11, Iowa District.*

Old Debts.—No suits shall be brought in the miners' court for indebtedness contracted in any other State or Territory, except by consent of all the parties interested, and no execution shall be collected on a payment rendered on such indebtedness, except as hereinbefore provided.—*Sec. 9, Banner District.*

Duties of Recorder.—It shall be the duty of the Recorder safely to keep the Records of the District, and to record all papers upon the payment of his fees. To act as secretary at all public meetings of the District, and by virtue of his office as Treasurer, to keep all moneys of the District paid to him, subject to the draft of the President; also, to keep all vouchers, so that at any time he may be able, when called upon, to exhibit the financial condition of the District.—*Chap. 5, Sec. 1, Griffith District.*

Murder.—Any person guilty of willful murder, upon conviction thereof, shall be hung by the neck until he is dead.—*Chap. 16, Sec. 1, Id.*

Manslaughter.—Any person guilty of Manslaughter or Homicide, shall be punished as a jury of twelve men may direct.—*Chap. 16, Sec. 2, Id.*

Larceny.—If any person or persons shall be guilty of stealing any property whatever in this District, and he or they be found guilty by a majority of a jury of twelve, chosen to try his or their guilt or innocence, he or they shall be sentenced to immediately restore the property stolen, and pay to the party injured all damages sustained directly or indirectly in consequence of the theft, and in case the guilty party shall not so restore and make good all the damages as aforesaid, the injured party may take sufficient property of the defendant found in this District, to satisfy all damage, and dispose of it in any way he may deem proper, and the defendant shall also be banished forever from this District, and he failing to leave immediately on notice, shall receive not less than five nor more than twenty-nine lashes, and in case the value of the property stolen be over one hundred dollars, he shall be hanged by the neck until he is dead; the injured party may proceed to retake his property and remunerate himself for damage sustained as above.—*Art. 9, Lower Union District.*

Attempt to Regulate Annual Labor.—Such regulations as the foregoing Resolution 3, of Las Animas District, are manifestly void. The United States law requires a certain amount in value of labor or improvements, and this value cannot be lessened by an arbitrary scale. They might with as much reason have fixed at once a single foot of sinking as the full equivalent of the \$100 required by law.

New Districts.—Since the congressional mining Act of 1872, the old district organizations are no longer preserved and had in fact become more or less obsolete for years prior to that Act. New Districts have been formed by miners' meetings, but only to the extent of giving a name and fixing general boundaries to a locality. Any attempt to revive old or create new district rules would be only productive of confusion, as they are by the terms of the Congressional law (R. S. §§ 2319, 2321) made subservient to both State and United States legislation. Their original recognition by territorial law is expressed in §§ 2677 and 2396 of the General Statutes.

A mining title may be proved without either district organization or proof of district rules.—*Golden Fleece Co. v. Cable Co.*, 1 M. R., 120.

Judicial Decisions as to District Rules.—Where in ejectment for a mining claim the plaintiff has described the same as located under district rules, he may recover without proof of the existence of such rules by evidence of his prior possession and the entry of defendant; but if his *prima facie* case on possession is negatived by any title proved by defendant, he must then show the existence of the district rules and his compliance therewith before he can introduce his location or record made under such rules.—*Sears v. Taylor*, 5 M. R., 318.

Courts will not enquire into the regularity of the mode by which district rules have been enacted, except upon allegation of fraud, or other like cause.—*Gore v. McBrayer*, 1 *M. R.*, 645.

Where the evidence renders it doubtful whether the written laws of a district are in force, both the written laws and parol proof of the mining customs may be offered in evidence.—*Colman v. Clements*, 5 *M. R.*, 247.

A mining regulation cannot restrict the number of claims which a party may hold by purchase.—*Prosser v. Parks*, 4 *M. R.*, 452.

A district rule cannot limit the size of a claim duly located before such rule was adopted.—*Table Mt. Co. v. Stranahan*, 9 *M. R.*, 465.

A right to hold a claim may be forfeited by failure to comply with the district rules. *St. John v. Kidd*, 4 *M. R.*, 454. But not unless the rule itself so expressly provides.—*Bell v. Bed Rock Co.*, 1 *M. R.*, 45.

A valid district rule may exist and be proved, although not found among the other written rules of the district.—*Harvey v. Ryan*, 4 *M. R.*, 490.

A custom, reasonable in itself, and generally observed, will prevail against a written mining regulation which has fallen into disuse.—*Id.*

The existence of a district mining law is a question of fact for the jury.—*Id.*

CONGRESSIONAL RECOGNITION OF MINERS' RIGHTS.

License to appropriate the Public Domain.—R. S. § 910.—No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land in which such mines lie is in the United States; but each case shall be adjudged by the law of possession.—§ 9, *A. C.*, Feb. 27, 1865.

License Under Congressional Act of 1866.—§ 1.—The mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States.—§ 1, *A. C.*, July 26, 1866. *Repealed May 10, 1872.*

License Under Present Congressional Law.—R. S. § 2319.—All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining-districts, so far as the same are applicable and not inconsistent with the laws of the United States.—*Sec. 1, A. C.*, May 10, 1872.

Section 910 contains the first Congressional recognition of the fact that the mineral lands of the United States were being appropriated by its citizens.

NOTE.—The appropriate Sections of Territorial, State and Congressional Statutes are printed in small type under the several headings in the order of time at which they took effect.

The full text of the State and Congressional Acts now in force is separately printed, at a later page.

From the time, however, of the discovery of gold in California, the government had tacitly recognized the occupation of its mining lands as such, and withheld them from survey and pre-emption.

Judicial Recognition.—The judiciary of California and all the States and Territories on the Pacific slope had recognized the "Miners' Title" as property entitled to protection, and they were followed by the Supreme Court of the United States to the same effect.—*Sparrow v. Strong*, 2 *M. R.* 320.

Consecutive Acts of '66, '70 and '72.—In 1866 the first Act was passed looking to the absolute disposition of mineral veins. In 1870 a Supplemental Act was passed embracing placers. In 1872 these Acts were revised and the Act of Congress of May 10 of that year, now found in Chapter 6, Title 32, of the Revised Statutes of the United States, is, with slight change, the Congressional law now in force.

LEGAL STATUS OF POSSESSORY CLAIMS.

Protected by Action at Law.—G. S., § 2681.—Any person settled upon any of the public lands belonging to the United States may maintain trespass *quare clausum fregit*, trespass, ejectment, forcible entry and detainer, unlawful detainer and forcible detainer, for injuries done to the possession thereof.—Nov. 1, 1861.

Title in the United States.—G. S., § 2686.—Nothing in this chapter contained shall be construed to deny the right of the United States to dispose of any lands in this State; nor shall the fact that the title to any lots, lands, lodes or mining claims hath not passed from the United States, be any bar to the recovery of the plaintiff in either of the actions specified in section eight of this chapter.—Nov. 1, 1861.

The above sections are parts of Acts of the first session of the Territorial Legislature. It is thus seen that the miner's possessory claim has been always recognized by Colorado Statute as the subject of protection by legal process.

Such an estate, dependent upon possession, is conversely one which may be lost by abandonment.—*Merritt v. Judd*, 6 M. R., 62; *Mallett v. Uncle Sam Co.*, 1 M. R., 18.

It is a freehold; that is to say, an estate which passes to the heir.—*Harris v. Equator Co.*, 12 M. R., 178; *Merritt v. Judd*, 6 M. R., 62.

It is declared by Statute to be real estate, (G. S., § 225), and is conveyed, sued for and otherwise treated in all respects as the property of the occupant, subject only to the paramount title of the United States.—G. S. §§ 2681, 2685, 2686.

Not a Vested Estate.—But as against the United States, it was not in the power of the State, and Congress

has not apparently offered by either of the mining Acts, before entry and payment, to give the miner technically more than a license—not a right of that kind known as vested or absolute estates—as against the United States; nor one which the government might not take away if it chose.—*Yo Semite Case*, 15 Wall, 77.

This question becomes of practical importance in considering the power of Congress to legislate so as to act retrospectively upon claims already located. If the miner has no vested estate they can so legislate without limitation. They may totally repeal the present mining law and compel claims already located and not entered for patent, to assume an entirely different status. The Act of 1872, requiring annual labor upon claims located under the Act of 1866, is an exercise of this power. If claims taken up under the Act of 1866 were vested estates, then the provision requiring labor thereon would be void.

The Miner's Title a Qualified or Conditioned One.—A party holding a possessory title is not compelled to go to patent nor to pay the government for his use of the land, and it is not to be presumed that the government would place itself in a position where its citizens could enjoy the land as owners without its being in the power of the United States ultimately to compel the payment of the purchase money; this power it does reserve by passing no title until the claimant enters the land for patent.

Such a decision as in the case of *Robertson v. Smith* 7 M. R., 196, that the permission to occupy, given by the mining acts, is equivalent to a patent, however acceptable to the miners, is only a judicial abuse of terms causing a fatal reliance to be placed by the honest but ignorant claimant, upon a title which is only perfected by the Letters Patent of the United States.

These observations are not made in justification of the equity of the Statute, nor in derogation of the miners' claims, but as the interpretation of the Acts as we find them, and to correct a wide spread but mistaken idea that the miner has a safe and unimpeachable title so long as he does his annual labor, without any necessity for his applying for government patent.

Distinctions Between Mines and Other Realty.—The only important distinctions taken between mining claims and other classes of real estate, under Congressional and State Laws, are

1. Special provisions as to taxation.
2. The title being first acquired by possession, it may be lost by acts amounting to discontinuance of possession, that is, by abandonment.
3. Such possessory title is conditioned upon compliance with local rules, and upon the performance of annual labor.
4. The mode of perfecting patent in the U. S. Land Office is wholly different from that regulating pre-emption or homestead grants upon agricultural lands.
5. A special statute exists to prevent the forcible dispossession of claimants in occupation of mines, which does not extend to other classes of real estate.

SCHOOL CLAIMS.

Fully one-half of all the sections of the old Territorial Statutes on the subject of mines, was taken up by a persistent attempt to force a "school claim" on each location. The whole effort was in violation of the Organic Act, and

has been held absolutely null and void as well by our own courts, as by the land office, (Copp. 44), and repudiated by the miners as an attempt to put the whole cost of schools on a class of men, who as a rule, were not persons with families.

By Act of 1862, claim No. 3, East or West, was to be set apart for schools; by Act of 1866, one side claim on each end of the discovery claim of 1400 feet was to be recorded—100 feet for schools and 100 feet for disabled miners.

SOLDIERS' CLAIMS.

By Acts of 1861, 1864 and 1866, claims belonging to soldiers were protected from forfeiture during enlistment and for two years after; they were also allowed to locate and record claims by proxy; and their claims were protected by the first mining Act ever passed, from sale on judgment in miners' court. Their practical importance has of course ceased, and there is no law in force which would extend to a soldier hereafter enlisting.

LENGTH OF LODE CLAIMS LOCATED BEFORE MAY 10, 1872.

100-Foot Act of 1861.—The term claim as used in the mining portions of this State, when applied to a lode, shall be construed to mean one hundred feet of the length of such lode, surface measurement, of the entire width of such lode or crevice: *Provided*, That in any case where the regulations of any mining district have heretofore defined the term claim to mean other than as above defined, nothing in this chapter shall be so construed as to impair the rights of any person or persons holding claims under such regulations as may have been heretofore established by the people of the district in which such claim or claims are situated.—*Nov. 7, 1861.*

1600-Foot Act of 1864.—§ 1.—That all mineral and quartz lodes, hereafter discovered, shall cease and terminate, so far as they have any legal existence, at the distance of eight hundred feet in either direction (on the line of the lode), from the center of the discovery hole.—*March 11, 1864. Repealed Jan. 10, 1868.*

1400-Foot Act of 1866.—§ 1.—That hereafter, each and every person who shall discover any mineral lode or vein of gold bearing ore, or of silver or other valuable metals in this Territory, shall, by virtue of such discovery, be entitled to take, hold and possess fourteen hundred feet, lineal measure, of such lode or vein, of which the discovery shaft shall be the center thereof; and said fourteen hundred feet, so taken, shall be known and described as the discovery claim.—*Feb'y 9, 1866.*

3000-Foot Act of Congress of 1866.—§ 4.—No location hereafter made shall exceed two hundred feet in length along the vein for each locator, with an additional claim for discovery to the discoverer of the lode, with the right to follow such vein to any depth, with all its dips, variations and angles, together with a reasonable quantity of surface for the convenient working of the same as fixed by local rules: *And provided further*, That no person may make more than one location on the same lode, and not more than three thousand feet shall be taken in any one claim by any association of persons.—*A. C. July 26, 1866. Repealed May 10, 1872.*

Territorial Act Conforming with Above.—G. L.—§ 1808.—No statutory law of the State of Colorado, shall be so construed as to prohibit the location of three thousand feet or less on any vein or

lode in the manner prescribed in Section Four of an Act of Congress, approved July twenty-sixth, one thousand eight hundred and sixty-six, entitled "An Act granting the right of way to ditch and canal owners over the public lands," and for other purposes; nor to prejudice any rights to obtain patents for the same, as provided in said act.—*Feb'y* 11, 1870.

G. L. § 1809.—All pre-emptions and locations of three thousand feet, or less, on any vein, lode or ledge made since the passage of the said Act of Congress, and conforming to the same, shall be good and valid.—*Id.*

G. L. § 1810.—Nothing in this Act shall be so construed as to prejudice any rights acquired prior to the passage of this Act.—*Id.*

Early Locations of 100 Feet.—The usual length under the district rules was 100 feet or 200 feet; by the Act of 1861, 100 feet became the general law, but this means strictly the length of one *claim* on the lode, for invariably many claims were recorded upon each side of the original, or discovery claim.

This practice began while the district rules were in full force. The discoverer was restricted to his discovery claim, and generally one additional claim, but as soon as the discovery claim was recorded, any person could obtain a claim by recording 100 feet to the right or left of the discovery, as claim No. 1, east; No. 2, east; No. 1, west, &c., indefinitely. These claims are supposed to be at least staked off on the ground, but no discovery hole was required, and, in fact, in most cases, only the paper record was made and the claims seldom pursued further, unless developments on the discovery claim seemed to indicate that the side claims might be of value. Such was not the original intention of the miners, but the custom degenerated to this and the records of hundreds of such claims remain, whose owners never, perhaps, did any work upon, or ever knew the exact situation of their claims.

This privilege to locate side claims was soon taken advantage of by the discoverer, who procured nominal parties

to record, and immediately after recording to convey their claims to him, and as soon as the A. C. 1866 was passed, it became the universal practice, the custom as it already existed being altered only in this: that the claims were no longer numbered, but were taken together as a joint location by a supposed association of fourteen persons, taking fifteen claims of 200 feet each, or 3,000 feet in all. Further, after the passage of such Act, the staking of the lode into its several claims was abandoned altogether; this, also, is to be observed, that before the Act each locator usually recorded one specific claim, in which the other locators had no interest, nor he in theirs, but after the Act, the record showed a joint location of undivided claims.

The 1,600-Foot Act of 1864 is barbarously worded, but can scarcely be considered as lengthening a claim beyond 100 feet, as it before existed. It seems to have been directed against the practice of recording so many claims upon a single discovery, making them invalid beyond the distance of 800 feet in either direction from the center of the discovery hole, and this has been the construction under which the miners always acted. A full record under this Act would then consist of sixteen claims, each 100 feet in length.

It may indeed be doubted whether at any time, as against an adverse *bona fide* claim, such nominal side claims were by the record alone, of any validity, unless actually possessed and defined upon the ground in some manner; *Cons. Rep. Co. v. Lebanon Co.* 9 Colo. 343; *Becker v. Pugh*, Ill. 589; *Hess v. Winder*, 12 M. R., 217; but the practice of the land office is to patent such claims without inquiry, if sufficient development for patent has been done on any one of them, or on the discovery.

The 1,400-Foot Act of February 9th, 1866, was the first law which enlarged the length of a *claim*, strictly so-called, and attempted to dispense with the practice of so many persons recording nominal claims upon a single discovery.

These 1,400 feet constituted one claim; one person was allowed to record in his own name, and side claims were prohibited. This, in its intentions, was the best of the Territorial Acts, but immediately afterwards came the A. C., July 26, of the same year, which destroyed its practical operation.

3,000-Foot Claims, 1866 to 1872.—The Act of Congress of July 26th, 1866, reduced a claim to the length of 200 feet, allowed an additional claim to the discoverer, and in its full operation, 3,000 feet to the discoverer and his thirteen supposed associates.

Between July 26, 1866, and February 11, 1870, a serious conflict existed between the Territorial Statutes and this act of Congress, as to the length of lode claims.

The Territorial Act prohibited locations beyond the extent of 1,400 feet; the Act of Congress said "*not more than*" 3,000 feet should be taken.

The Act of Congress was not even a permission; it was merely a restriction or limitation, and it is by no means clear that the Legislature had no power under the Act of Congress to restrict locations to less than 3,000 feet, and so it has been ruled in the Land Office upon a similar statute of New Mexico. (Opp. 34.) This difficulty will, however, be found serious only in litigated cases, as it is the practice of the office to give a patent for the entire 3,000 feet, without pressing the question.

But after February 11, 1870, and until May 10, 1872, 3,000 feet were allowed beyond doubt, the Territorial Act

of 1870 being made for the purpose of conforming to the Congressional law, and confirming (or attempting to confirm) previous locations of the full limit, subject to such adverse rights as might have intervened.

LENGTH OF LODE CLAIMS AT VARIOUS DATES.

To recapitulate we may say that

1. Prior to Nov. 7, 1861, the length of a lode claim was fixed by district rules.
2. From Nov. 7, 1861, to March 11, 1864, the length of a claim was 100 feet, but an indefinite number of claims could be based on a single discovery.
3. From March 11, 1864, to February 9, 1866, 100 feet was the length of a claim, and sixteen claims of that length could be based on a single discovery.
4. From Feb. 9, 1866, to July 26, 1866, 1,400 feet was the length of a claim and the limit of a location.
5. From July 26, 1866, to Feb. 11, 1870, 200 feet was the length of a claim, and 1,400 feet could be taken under one location.
6. From Feb. 11, 1870, to May 10, 1872, 200 feet was the length of a claim, and 3,000 feet could be taken under one location.
7. Since May 10, 1872, 1,500 feet is the length of a claim, and it constitutes a single location. Under present law a claim and a location are practically synonymous terms.

WIDTH OF LODE CLAIMS LOCATED BEFORE MAY 10, 1872.

50-Foot Act of 1866.—§ 4.—On all mineral lodes or veins of gold-bearing ores, or of silver or other valuable minerals in this Territory, the owner or owners of all such deposits shall, by virtue of priority of discovery, be deemed and held to be the owner or owners of all spurs, off-shoots, dips, angles, feeders, cross or parallel veins of any character or name whatsoever, lying and being within the limits of twenty-five feet in either direction from the center of said first discovered lode or vein.—*Feb. 9, 1866.*

Indefinite Under A. C. 1866.—§ 4.—No location hereafter made shall exceed two hundred feet * * * * * together with a reasonable quantity of surface for the convenient working of the same as fixed by local rules.—*A. C., July 26, 1866. Repealed May 10, 1872.*

The district rules usually allowed a surface width of fifty feet; sometimes more, often less. The Act of February 9, 1866, made twenty-five feet on each side the center of the vein the width of claim by implication only, and yet was generally construed as restricting width of claims throughout Colorado; (Copp., 201) and this was the only mention of the subject in the Territorial Statutes, prior to 1874.

The A. C., 1866, allowed a "reasonable quantity" of surface, but the Territorial Statute of the same year was taken as fixing the amount as above stated, at 50 feet.

Prior to the Act of Congress of 1872, the width of claims had been considered merely as a question of sufficient surface for convenient working.

WIDTH OF LODE CLAIMS BETWEEN MAY 10, 1872, AND JUNE 15, 1874.

Notwithstanding the fact that the A. C. May 10, 1872, allowed to lode claims in general an increased width not exceeding 600 feet, the Territorial Statute printed under

the last heading, remained in force until the 15th of June, 1874, and fifty feet remained the legal width until that date.

DISCOVERY AND LOCATION OF LODES BEFORE THE ACTS NOW IN FORCE.

Shaft and Stake Required by Act of 1866.—§ 2:—All lodes or veins of gold, silver, or other valuable minerals, which may hereafter be discovered, shall be marked at the point of discovery by a substantial stake, post or stone monument, having inscribed thereon the name of the discoverer or discoverers, and the name of the lode or vein, with date of discovery; and the discoverer or discoverers shall, before recording, excavate thereon a shaft at least ten feet deep, or deeper, if necessary, to find a well defined crevice, or forfeit all right and title he or they may have acquired by virtue of such discovery.—*February 9, 1866.*

Mode of Location Not Strict.—Prior to 1866 there was neither United States nor Territorial Law regulating the location of lode claims or the recording of the same. These matters were determined exclusively by the District Rules, or, if not mentioned in the written regulations of the district, would necessarily be governed by such requirements as, from the general customs of miners, would be considered reasonable. Before the passage of the Territorial Act above printed it was difficult in terms to state of what a location consisted. A "discovery hole" and staking of claims had been incidentally mentioned, but there was nothing prescribed by statute. Sec. 2, of the Act of 1866, was the first requirement of a discovery shaft of any certain depth, but it by no means follows that no identification or sign of occupation was previously necessary. Sometimes the district rules covered this point; in all cases the actual disclosure of the vein, and not merely the float or indication of the vein, was required, at least with regard to

the discovery claim; and almost universally a stake was marked with the name of the lode and of the discoverer, and the date of discovery, and often each claim was measured and staked off.

That some Act of Location was required, has never been disputed. But, in the absence of District Rules, what would amount to a sufficient location can only be defined as such Acts of Appropriation as would amount to a declaration that the locator had appropriated the ground, and he sufficient notice to other prospectors that he had so appropriated it.—*Hess v. Winder*, 12 M. R. 217; *English v. Johnson*, *Id.* 203; *Attwood v. Fricot*, 2 M. R. 305; *Gleeson v. Martin White Co.*, 9 M. R. 429; *Gonn v. Russell*, 12 M. R. 630; *U. S. v. Castillero*, 2 Black, 191.

In the recent case of *Cons. Rep. Co. v. Lebanon Co.* 9 Colo. 313, it has been ruled that the posting of the notice and the recording of certificate not followed by development or representation would not hold the claim against a subsequent location. See also *Becker v. Pugh*, *Id.* 589.

LENGTH OF LODGE CLAIMS SINCE MAY 10, 1872.

The Present Congressional Act.—R. S., § 2320.—Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located.—§ 2, A. C. May 10, 1872.

The Present State Law.—G. S. § 2397.—The length of any lode-claim hereafter located may equal but not exceed fifteen hundred feet along the vein.—*Feb'y 13, 1874.*

Since May 10, 1872, fifteen hundred feet has been the well known limit of a lode. This number of feet constitutes one undivided claim, or one lode as the word is commonly used—that is, so much of a vein as is covered by one location based upon a single discovery—and in practice so much of one vein as is known by a single name and covered by a single record. An "Extension" is a separate lode. The length of 1,500 feet was expressly adopted by the Territorial Act of 1874, and even before the passage of that Act, there was no statute which could be construed against it.

Length—How Distributed.—This length, by common usage, is taken 750 feet on each side of center of discovery, or all on one side except enough to include the discovery shaft itself, or it may be distributed in any proportions on the two ends of the discovery shaft.

Location of Excessive Length.—The import of the decisions on this point seems to be that an inadvertent overstepping of the legal length will not avoid the claim; *Richmond Co. v. Rose*, 114 U. S. 576; but that the claim as to the excess is void; *Hauswirth v. Butcher*, 4 Mont. 299; and that a gross excess (1763 instead of 1500 feet) made without excuse will defeat the whole location.—*Leggatt v. Stewart*, 2 Pac. 320.

WIDTH OF LODE CLAIMS SINCE JUNE 15, 1874.

Limits Allowed by Present U. S. Law.—R. S. § 2320. * * * No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on

each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary. The end lines of each claim shall be parallel to each other.—§ 2, A: C. May 10, 1872.

Present Width Fixed by Colorado Statute.—G. S. § 2398.—The width of lode claims hereafter located in Gilpin, Clear Creek, Boulder and Summit Counties, shall be seventy-five feet on each side of the center of the vein or crevice; and in all other counties the width of the same shall be one hundred and fifty feet on each side of the centre of the vein or crevice: *Provided*, That hereafter any county may, at any general election, determine upon a greater width not exceeding three hundred feet on each side of the center of the vein or lode, by a majority of the legal votes cast at said election, and any county by such vote at such election may determine upon a less width than above specified.—*Feb'y 13, 1874.*

300 Feet, Except in Certain Counties.—The A. C. of 1872, having allowed to the locator all the veins within the side lines of his claim, gave at once to the question of width an importance before unknown. The Legislature having in its power to choose between the extreme width of 600 feet and the minimum width of 50 feet, a great difference of opinion resulted, citizens of the older mining counties generally contending for a narrow width, while in the new districts a much greater width was desired; after great debate it was fixed at 150 feet for Gilpin, Clear Creek, Boulder and Summit counties, and at 300 feet in all other counties, which is the only instance of county legislation on the subject of mines in Colorado; except an unimportant local Act concerning district records in part of La Plata county.

No instance is known to the author of any attempt, in any county, to increase the width by an election held under the proviso of section 2398; and the constitutionality of any such proceeding, if attempted, would admit of very great doubt.

Center of Vein, Center of Claim.—It will be observed that the center of the lode is made the center of this width, both in the Congressional and State Acts; if,

therefore, a party attempt to locate more than half the extreme width on either side of his vein, the location of such excess is without the authority of law, even although the entire width be within the statutory limit.

Location of Excessive Width.—The Surveyor-General will not issue an order for survey for patent upon a location certificate which claims more than 75 feet in the counties named, or more than 150 feet in the other counties, from the centre of the vein, and it is doubtful whether any court would receive such a certificate in evidence. Such mistakes are the work of surveyors who undertake to put their field notes into the form of a location certificate, in total ignorance of what constitutes a valid location certificate. This document should be drawn by a competent attorney.

Vein Approaching Side Line, Leaving Excess of Width on One Side.—It is true that it may not be known when the stakes are set what the course of the lode may be, and honest errors in this respect are readily committed; but the vein being the basis of location, and it having been decided that when a vein leaves the side lines of location the claim both as to veins and surface beyond that point is void, it necessarily follows, where either side line is found at any point to be more than the legal distance from the centre of the vein, that the location in such case has not been based upon a vein lying within the statutory limits, and comes within the same reasoning which renders all that part of the location void in which no vein is found.—*Patterson v. Hitchcock*, 5 M. R., 542.

DISCOVERY AND LOCATION UNDER LAWS NOW IN FORCE.

Discovery Required.—R. S. § 2320. * * * No location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. * * * —*Sec. 2, A. C. May 10, 1872.*

Staking and Record.—R. S. § 2324.—The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the District is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. * * * —*Sec. 5 A. C. May 10, 1872.*

Discovery Shaft, Notice and Stakes.—G. S., § 2401.—Before filing such location certificate the discoverer shall locate his claim by :

First—Sinking a discovery shaft upon the lode to the depth of at least ten feet from the lowest part of the rim of such shaft at the surface, or deeper, if necessary to show a well defined crevice.

Second—By posting at the point of discovery on the surface a plain sign or notice, containing the name of the lode, the name of the locator, and the date of discovery.

Third—By marking the surface boundaries of the claim.—*Feb. 13, 1874.*

Corner Posts, Center Posts.—G. S. § 2402.—Such surface boundaries shall be marked by six substantial posts hewed or marked on the side or sides which are in toward the claim, and sunk in the ground, to-wit: one at each corner and one at the centre of each side line. Where it is practically impossible on account of bed-rock to sink such posts, they may be placed in a pile of stones, and where in marking the surface boundaries of a claim any one or more of such posts shall fall by right upon precipitous ground, where the proper placing of it is impracticable or dangerous to life or limb, it shall be legal and valid to place any

NOTE—The original section 6, of the Act of 1874, reads as follows: "Such surface boundaries shall be marked by six substantial posts hewed or marked on the side or sides which are in toward the claim, and sunk in the ground to-wit: One at each corner and one at the center of each side line. Where it is practically impossible on account of bed-rock or precipitous ground to sink such posts, they may be placed in a pile of stones."

such post at the nearest practicable point, suitably marked to designate the proper place.—*Compiled from Acts of Feb'y 13, 1874, and Feb'y 2, 1876.*

Open Cuts and Tunnel Discoveries.—G. S. § 2403.—Any open cut, cross-cut or tunnel which shall cut a lode at the depth of ten feet below the surface, shall hold such lode, the same as if a discovery shaft were sunk thereon, or an adit of at least ten feet in along the lode from the point where the lode may be in any manner discovered, shall be equivalent to a discovery shaft.—*Feb. 13, 1874.*

Time to Sink Discovery.—G. S. § 2404.—The discoverer shall have sixty days from the time of uncovering or disclosing a lode to sink a discovery shaft thereon.—*Ibid.*

Appropriation.—The doctrine of appropriation would have no application to mining and water claims on the Pacific Slope if the lands, before the discovery of minerals, had passed into the hands of private owners; nor to the government itself, if the government had chosen either to treat the miners as trespassers or to arbitrarily dispose of the lands at public sale. Instead of adopting any such policy, the United States for many years tacitly, and since 1866 by positive enactment, opened the lands to the explorer and occupant; in other words, the mineral lands were offered to the first appropriator. The acts of appropriation as to mineral land are equivalent to such acts as would amount to occupation in other cases: there must be an intent to possess the claim, such acts of appropriation as are sufficient to carry out this intention, and finally such acts must have such publicity by record as to operate as notice to all that the lands have been actually appropriated.

The appropriation of a mine, the appropriation of water for mining or irrigating purposes, and the occupation of homestead land are therefore in substance the same, and differ only so far as the various subject matters differ, the criterion in each case being the intent of the occupant to segregate a certain portion of the public domain to his

several use, followed by acts manifesting such intention with such publicity as is due to the rights of third parties. —*Sparrow v. Strong*, 2 M. R. 320. *Gore v. McBrayer*, 1 M. R. 645.

The formal Acts of Appropriation in the case of lode claims are :

- (1) Discovery.
- (2) Location.
- (3) Record.

Discovery.—The discovery of a lode of itself gives title to the vein for such length of time as is allowed by law for the completion of the location and record (*Murley v. Ennis*, 12 M. R. 360; *Erhardt v. Boaro*, 4 M. R. 432; 113 U. S. 527); and when the location and record are made, the inception of title still relates back to the date of discovery.

From this fact a later record may show an older and better title than a record made several months earlier; *Patterson v. Hitchcock*, 5 M. R. 542. For this reason it is advisable, although not necessary, for the location certificate to recite the date of discovery as well as the date of location.

The Vein Must be Reached.—The discovery is not complete until the vein itself is disclosed. The finding of float or loose quartz is not sufficient. There is a custom almost universally respected among miners, when any person has discovered indications of a lode and is diligently following up these indications, to allow thirty days in which to uncover the deposit; but, if another person, by a shorter cut, should first actually reach the vein, it would seem that the first prospector could assert no priority; and such have been the decisions. *Upton v. Larkin*, 6 Pac. 66; *North Noonday Co. v. Orient Co.*, 9 M. R. 529; *Overman Co. v. Corcoran*, 1 M. R. 691. But in the case of *Erhardt v. Boaro*,

113 *U. S.* 536, there is a dictum to the effect that knowledge of mineral in the immediate vicinity would protect a prospector at work who had set notice and stakes.

Discovery after Location.—If a location be made before discovery but it is followed by a discovery before any adverse rights intervene, there are several decisions to the effect that such subsequent discovery cures the original defect and that the claim is valid.—*McGinnis v. Egbert*, 8 *Colo.* 41; *Golden Terra Co. v. Mahler*, 4 *M. R.* 390; *Jupiter Co. v. Bodie Co.*, 4 *M. R.* 411; *Zollars v. Evans*, 4 *M. R.* 407.

Lode Found Outside of Discovery Shaft.—And it has been decided that although no lode was found in the discovery shaft, its disclosure elsewhere within the claim before any adverse rights had accrued would validate the claim. *Harrington v. Chambers*, 1 *Pac.* 362. But to the contrary is the case of *Van Zandt v. Argentine Co.*, 4 *M. R.* 441; and if it be true that the sinking of the discovery within patented lines vacates the entire claim; and that the patenting of the discovery shaft by a hostile claim invalidates the entire claim; and if the discovery shaft be the point from which both length and width of the claim are determined, the point at which the notice is to be posted, and where it is required in terms to show a well defined crevice, it seems inconsistent to hold that discovery elsewhere would be of any avail where there was none in the discovery shaft.

By Relocation Upon the Shaft Showing the Mineral afterwards discovered, this danger can be avoided where no hostile discovery has intervened.

The Point at Which a Lode is Discovered is not material. It may be discovered at the surface where it outcrops above all surrounding country rock; or under the slide near the surface at its true apex, by shaft, open cut or

boom ditch; or at greater depth by a tunnel cutting the vein horizontally across its dip, or by a shaft striking it perpendicularly upon the incline.

Discovery and Discovery-Shaft Distinguished.

—The fact of discovery is a fact of itself, totally to be disconnected from the idea of *discovery shaft*; the *discovery shaft* is a part of the process of location, subsequent to discovery. If a lode, for instance, be discovered in a cross-cut run to operate some other known vein, and no steps are taken to stake and record such lode, it becomes no more the property of the owner of the cross-cut than if he had never happened to strike it, and although he could have followed up the discovery by perfecting title, his neglect so to do is equivalent to abandonment of the inchoate right given by discovery. The discovery shaft need not be sunk at the point where the lode was first actually discovered.

All Methods of Discovery, whether by shaft, cut, tunnel, boom-ditch or otherwise, are recognized by the Statute, the only distinction being, that when discovered at the surface or in the slide there must be a shaft at least ten feet deep, or deeper, if necessary to show a well-defined crevice; while if disclosed in an open cut, cross-cut or tunnel, the vein must be cut and a well-defined crevice exposed, at least ten feet below the surface.

Discovery by Prospecting Drill.—The discovery of a lode or deposit by either horizontal or perpendicular drilling would doubtless fulfill all the conditions of a legal discovery, and would operate to give the party the sixty days allowed to complete a discovery shaft; but the idea that a drill-hole would be considered as the equivalent of a *discovery shaft* cannot be entertained. It would be a physical impossibility for such drill-hole to show a well-defined crevice, and a drill-hole is neither a shaft, cut or other opening

such as are enumerated among those things which may constitute a discovery shaft or cut. The discovery of a lode is a matter of interest to the prospector only; but if he intend to appropriate the same it must be by such physical workings as shall amount to a notice to third parties. A drill-hole is not a notorious physical land mark, and could not be construed as such notice.

Discovery Holds 60 Days.—A discovery holds the claim for the sixty days allotted to sink the discovery shaft. As soon as a vein is found by the prospector it is the custom to place at the point of discovery a notice about as follows :

CONTENTION LODGE.

The undersigned claims sixty days to sink discovery shaft and three months to record on this vein. July 4, 1887.

JEREMIAH LEE, Discoverer.

But if it is *bona fide* the intention of the discoverer to complete his location, the absence of such notice would not be fatal. This is not the notice required when the location is made. (page 32). It is a mere warning to other prospectors that some one has acquired a prior right on that crevice. *Erhardt v. Boaro*, 113 U. S. 537. It seems useless to add that if the discovery shaft is not completed within the legal time it is mere folly to pull down the old notice and put up another of a later date. The sixty days begin to run from the date of discovery, and nothing can enlarge the time.

Location.—The location of a lode consists in defining its position and boundaries, and in doing such acts as indicate the intention to occupy and possess it under the license of the United States.

The formal parts of a location include :

1. The location notice at discovery.
2. The discovery shaft.
3. The boundary stakes.

Location Stake.—Although a very old custom, the requirement of the Act of 1866 as to a location stake was not generally considered imperative, but in a recent case the Supreme Court enumerate it as one of the constituent parts of a complete location.—*Strepey v. Stark*, 7 *Colo.*, 618.

The words of the Act require "a plain sign or notice," but there never has been any uniformity among prospectors in the details of the notice, or in the mode of posting it. It may be substantially complied with by writing on a blazed tree or on a board nailed at discovery, or by legible carving, or by any other rude but honest form of notice, so that it be intelligible and open to observation; but the loose practice of writing on a chip or stick thrown into the discovery hole, is an attempt to evade or abuse the fair requirement of the law. The following

FORM OF NOTICE ON STAKE:

The FAMINE LODGE, discovered by *Jesse White*, November 1, 1886. Claim 750 feet easterly and 750 feet westerly from discovery.

JESSE WHITE.

fully complies with the Act, and would still be sufficient without signing at the foot and without stating the number or direction of feet claimed.

Discovery Shaft Must be on Public Domain.—

The discovery must be sunk upon unoccupied public land; that is to say it must be outside of the lines of any patent or even of any valid location.—*Upton v. Larkin*, 6 *Pac.* 66; *Little Pgh. Co. v. Amie Co.*, 17 *Fed.* 57; *Armstrong v. Lower*, 6 *Colo.* 393.

Patent Over Discovery Shaft.—And where a party allows a claim held by other parties to go to patent over his discovery shaft, "the loss of the discovery is a loss of the location."—*Gwillim v. Donnellan*, 115, 15 *U. S.* 45.

Claim Must Include Discovery Shaft.—It is self evident that the claim must include the discovery shaft, and proof that by change of boundaries they were made so as to exclude the discovery shaft is admissible to defeat such location.—*McGinnis v. Egbert*, 8 Colo. 54.

Discovery Shaft Must be Ten Feet Deep.—In the case of the *Maine and Phoenix lodes*, located under the Act of 1866, Hon. Judge Belford decided that when a discovery shaft was sunk upon sloping ground the *average* might be taken to determine whether the shaft was of legal depth; but since June 15, 1874, it must be at least ten feet from the lowest part of the surrounding surface.

In all the litigation known to the writer, it has always been conceded that the depth of ten feet required must be found by taking a perpendicular measurement, not regarding the slope or dip of the shaft.

After a shaft has been sunk ten feet the ground at the collar may cave, or the shaft may become so filled with *debris*, or the making of a platform or raised collar may make it difficult to ascertain the exact line of the original rim of the shaft, or to ascertain its original bottom. In view of these facts and of the essential importance of the shaft being full ten feet deep, it is always advisable to sink it two or three feet deeper and remove all ground for cavil or contention.

It has, however, in several cases been decided *anisi prius*, both in the United States Court at Denver and in the First Judicial District, that where the discovery shaft had not reached the legal depth at time of record, but had been completed to that depth afterwards and *before any adverse rights had intervened*, such discovery shaft was valid.

Discovery Must Show Well Defined Crevice.—

Besides reaching a certain depth, a well-defined crevice must be found in the shaft.

If a crevice do not show in ten feet, the shaft must go deeper; if it appear sooner, the ten feet must still be completed. The crevice shows the lode discovered, the depth shows the lode appropriated; even before the passage of any ten-foot shaft law, such a crevice was required to be shown as decided by Hon. Judge Belford upon the location of the *Bowman Lode*; but in the *Eagle-Badger injunction case*, decided at Denver. Hon. Judge Wells, while holding the necessity of a discovery shaft of the depth fixed by Statute, also ruled that the term "crevice" must be taken in connection with the nature of the deposit, and that if, as was suggested, the Mt. Lincoln discoveries were not true veins or fissures, the shaft might pass entirely through the deposit and still remain a valid monument of occupation.

Discovery Need Not Show Wall.—It has been decided in Montana (*Foote v. National Co.* 9 M. R. 605) that at least one wall of the lode must be disclosed before the vein can be considered as discovered. But this decision makes the discovery dependent upon a single incident, which is not by any means the only proof of the existence of a vein. Such decision is not authority in this State; nor should it have any weight, because wholly unsupported by reason. There are certain classes of deposits which are doubtless lodes or veins within the intent of the Act of Congress, which show no well-defined walls after thorough development, much less within that amount of working which is required as the basis of a record.

Shaft Through Slide or Country.—Nor does it make any difference that the shaft is started in slide or upon a stratum of country rock, if it pierce through the

slide or country and find a crevice at a depth of ten feet or more. Such a shaft fulfills all the statutory conditions.

Separate Discovery for Each Claim.—The attempt to locate two full claims upon one discovery shaft is a palpable fraud. It is sometimes alleged that two lodes cross in the discovery shaft, but no ten-foot shaft can prove such fact if such a coincidence ever occurs.—*McKinstry v. Clark*, 4 Mont. 370.

Open Cut, Adit and Tunnel Discoveries.—The Statute provides that discovery by means of an open cut, adit, cross-cut or tunnel, shall be equivalent to a shaft. Where the discovery is by cross-cut, tunnel or open cut it must show the lode at a depth of ten feet below the surface, that is to say, the breast of the cut or tunnel must be of that depth at its bottom to be the equivalent of a ten foot discovery shaft; but where discovery is by an adit, the Supreme Court have ruled in two cases that it need not be ten feet deep, nor any specific depth, at the breast, but that the adit must be ten feet in length along the vein.—*Gray v. Truby*, 6 Colo. 278. *Electro Magnetic Co. v. Van Auken*, 9 Colo. 204.

In the latter case they also held that an adit need not enter cover to be an adit. The effect of the latter decision is to confuse all the distinctions between an adit and an open cut, so that if the hole or stripping discloses ten feet in length of the vein it may be styled an adit, although in fact an open cut. It is not safe to rely on this construction, and no prospector should consider his discovery complete until he has ten feet in depth at the breast of his cut, or a covered adit at least ten feet in along the vein.

The words cross-cut and tunnel are identical terms, except that the former is usually applied to short workings and the latter to those of greater length. Where the dis-

covery is in a cross-cut or a tunnel the location notice should be posted immediately above the point where the vein is cut below, making proper allowance for the supposed dip of the vein, and the staking should then be made so as to measure the legal width and length from the location stake in the same manner as if there were a discovery shaft at the point where such location stake has been set.

It does not seem that a discovery in a tunnel, even where the tunnel has been located and surveyed under the Act of Congress, will ever be construed to amount to a valid location without the posting of notice and the marking of boundaries in the same manner as in the case of surface discoveries.—*Corning Tunnel Co. v. Pell*, 4 Colo. 507.

Staking Boundaries.—That the staking of the surface boundaries of the claim has been required upon all locations made since May 10, 1872, has been expressly decided.—*Holland v. Mount Auburn Co.*, 9 M. R. 497; *Gelcich v. Moriarty*, *Id.* 498; *Hauswirth v. Butcher*, 4 Mont. 299. These decisions are not made upon local Statutes, but as the construction of R. S., § 2324, above printed; nor can we see how any other construction can be contended for. It follows, therefore, that between May 10, 1872, and the 15th of June, 1874, surface staking along the bounds of the claim was required in all cases, notwithstanding the fact that between those dates we had no Territorial Statute on the subject. The *Martin White* case, below quoted, is to the same effect and gives a full review of the different modes of location on the Pacific Slope.

It may be true in instances, that hardship results under this provision; but it is better for a party to lose a portion of his vein by its departure from its staked lines, than that he be allowed to leave his vein and its course undetermined until a rich discovery in the vicinity suggests the time

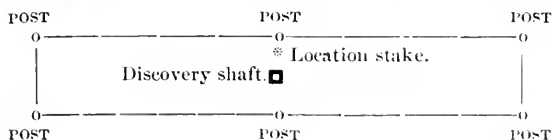
arrived to "prove up" and take his neighbor's lode. This is not a forced illustration—it is the very evil which the law is intended for the future to prevent.—*Gleeson v. Martin White Co.*, 9 M. R. 429; *Gonn v. Russell*, 12 M. R. 630; *Gilpin Co. v. Drake*, 8 Colo. 586; *Sweet v. Webber*, 7 Colo. 443.

Three Months to Complete Staking is the time allowed by implication from the Statute. The discoverer has sixty days to complete his discovery shaft and three months to record. If his staking is completed at any time within the three months, that is, within the period allowed between the date of discovery and the date when record must be made, it is in apt time. He is allowed less time to sink his discovery than to set his stakes, because he should know, as soon as his vein is disclosed, where to sink; but he cannot so readily know the course of the vein, and consequently needs time for this part of the location, inasmuch as, his stakes once set, he covers no more of his vein than lies within them.—*Erhardt v. Bouro*, 113 U. S. 527.

Even if the setting of his stakes is delayed beyond the period of three months, the location is not invalidated where no adverse rights have intervened.—*McGinnis v. Egbert*, 8 Colo. 41.

All Statutes Limiting Time to perfect location and record are directory where there is but a single claimant, and delay becomes material only when the rights of third parties have intervened.

Diagram of Location.—The diagram of a lode correctly located, under the Act of 1871, will show substantially as follows:



ELEMENTS OF LOCATION.

1st. Discovery shaft at least ten feet deep from the lowest part of the rim at the surface, and showing a well-defined crevice.

2d. Location stake; a plain sign or notice containing the name of the lode, the name of the locator, and the date of discovery.

3d. Two substantial side posts sunk in the ground and hewed on the side which is *in* toward the claim. These side posts must be sunk in the centre of each side line; that is, in a 1,500 foot claim, 750 feet from each end line.

4th. Four substantial stakes, one at each corner of the claim, sunk in the ground and hewed on the two sides which are *in* toward the claim.

5th. It is the invariable custom where there are angles in the side lines, to place a stake, hewed on the side *in* toward the claim, at each angle.

Must Cover Apex.—The stakes of the location must include the apex of the vein and in so far as they fail so to do, the claim is void or defective to that extent: That is to say, no title is acquired to any portion of the vein underlying that part of the apex not covered by the survey, and the right to the dip on that portion which is covered is more or less affected. The points arising in this class of cases are considered under "APEX."

Locating Without Aid of Surveyor.—In locating any class of claims a survey is always advisable.

If the prospector, however, cannot procure a professional surveyor (and it is often impracticable), a reasonable degree of care will suffice to locate his boundaries with certainty sufficient to make the subsequent record valid.

The record is merely a description of the claim as staked on the ground; if not properly staked the record does not make a good location; but, if the location has been properly made, the record can readily be made to describe it fully, whether such location has been made by a surveyor or otherwise.

The discovery shaft being taken as the center of the claim, and the initial point of location, a tape line measurement from its center 75 (or 150) feet at right angles to the lode, reaches to the point where a center stake must be set; return to discovery shaft and continue the same line on the other side the same distance and set the second center or side stake; at right angles to this line and across the center of discovery shaft run a line 750 feet each way along the supposed course of the lode. This gives the center line lengthwise of the claim, and from each end of this center line measure 75 (or 150) feet on each side for the end lines on the same course as the *line between the center stakes*, which will give the point at which to set the corner stakes, and also make the end lines parallel as required by law.

Measuring the length of the claim along its center, with an offset of 75 feet (or 150 feet) at right angles in each direction at discovery shaft and at each end brings the same result as if both the side lines as well as the end lines were measured.

Staking and Marks on Stakes.—At each of the four real corners of the claim, at the center of each side line, and at each extra angle made in the claim, set a substantial stake, blaze it and mark the blazed part with its proper number and the name of the lode. In addition to the number write "north center side stake," "south center side stake," "northeast corner, etc.," as the case may be, and put the name of the lode on each stake.

The Statute requires each stake to be hewed or marked on the side or sides in toward the claim. This would be satisfied by blazing alone, but it is customary to shave the *in* side (which indicates the relation of the stake to the claim) and mark with pencil the name of the lode, number of corner, etc., as above directed.

Any corner may be called No. 1; call the other corner on the same end line No. 2, and proceed thus continuously around the claim, setting an additional corner post at each angle of the claim.

Position of Center Stakes.—In the case of the *Hardin Lode*, the claim was surveyed 600 feet in one direction and 900 feet in the opposite direction from center of discovery. The center stakes were placed opposite discovery, which left them each 150 feet from their proper places. The Supreme Court held that they could not be considered as substantially in the center; but on the other hand, they held that if the corner posts were properly on the ground, the absence of center stakes did not invalidate the location.—*Pollard v. Shively*, 2 M. R. 229.

Tying the Claim.—In addition to staking the boundaries, it is essential to have sufficient ties by which to identify the claim in the location certificate. The use of the bearings to mountain peaks used by surveyors with instruments is impracticable in this kind of survey—take instead of such monuments, marks carved on prominent boulders or prominent blazed trees, neighboring shafts or shaft-houses. Anything which is a “natural object” or “permanent monument” (and reasonably substantial and prominent) is sufficient to identify the claim. From the

NOTE.—No specific number of ties are required, but at least two or three different monuments should be selected for such purpose.

center of the discovery and from at least one of the corner posts take careful measurements of the exact distance to such monuments (the most prominent possible under the circumstances) as have been selected to use in the location certificate to tie, describe or identify the claim.

What are Sufficient Ties.—A tree blazed or otherwise referred to by some peculiarity as in the Colorado case, "a double spruce tree," has been declared a sufficient monument. In certain places trees might be the only objects available, and have been considered good boundary monuments from time immemorial. A neighboring shaft or a prominent post firmly fixed in the ground is a good monument.—*Jupiter Co. v. Bodie Co.*, 4 M. R. 412.

Calling for Adjoining Claims as Monuments.—A well known claim called for as an adjoiner or as a witness is permissible as a part of the general description, but it has been held that this is not of itself sufficient, such a call being for neither a natural object or permanent monument.—*Baxter Co. v. Patterson*, 3 Pac. 741. *Drummond v. Long*, 13 Pac. 543. *Gilpin Co. v. Drake*, 8 Colo. 586.

On the other hand a notice calling for adjoiners on all four sides was held valid, although the claim was described as in a quarter section different from the true one.—*Duryea v. Boucher*, 7 Pac. 421.

Technical Description by Metes and Courses not Essential.—A record based on a location made as above directed, the corners and side stakes being marked and the notice set, which so identifies the situation of the claim (by reference to natural objects or permanent monuments tied to its discovery shaft or corners) that it may be readily found by a stranger examining the record, and for courses calls for some certain general direction and other-

wise complies with all the statutory requirements herein stated—is as valid as one which calls for degrees, minutes, metes and bounds.

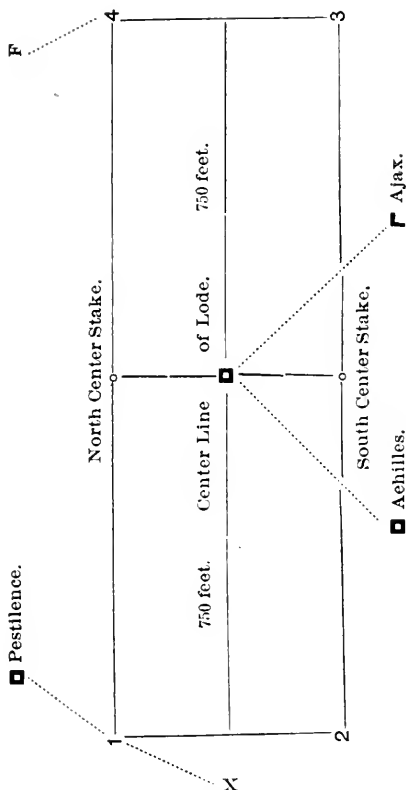
Precautions at Time of Location.—The side and corner stakes being properly set, the location stake fixed and properly inscribed, and the ties or monuments measured, take the precaution at the time to measure the depth of the discovery shaft to see that the full ten feet in depth exist, recollecting that the collar is apt to eave in and the bottom to fill up with soil, inviting an attack on the location for want of legal discovery. Note also the exact result of this measurement on the location stake.

Size of Stakes, Etc.—The statute says that the posts shall be *substantial* and shall be *sunk in the ground*. The surveyors' rules, which are more specific, require them to be not less than four inches in diameter, four and one-half feet long, and set twelve inches in the ground.—Rule 19, "SURVEYORS' RULES."

In *Pollard v. Shively*, 2 M. R. 229, the Court held that a stump properly marked might be adopted as a boundary stake, and there is no doubt that a stone post literally complies with the law.

Where Stakes Cannot be Set.—Where a stake cannot be driven on account of bed-rock, it should be fixed in a pile of stones, and in official surveys this marking is required in all cases. Where a stake cannot be set on account of precipitous ground, the witness stake should be set as near as possible, and on it should be expressed the course and distance to the corner or center stake, for which it is a substitute.

DIAGRAM OF SURVEY.



Failure to Set Stakes.—Where the stakes of one end of a claim were not set, merely because the point was difficult of access, it was held that the claim was not valid.—*Croesus Co. v. Colorado Co.*, 19 Fed. 78. And as a matter of course, the failure to set them through inadvertence or neglect would be fatal.

Variation between Courses and Monuments.—As the result of carelessness, accident or defective instruments, variations between the courses called for in the record and the monuments on the ground, are matters of constant occurrence. The general rule in such cases is that the monuments control.—*Cullacott v. Cash Co.*, 8 Colo. 179.

But it was held in the *Hardin Lode* case, 2 M. R. 229, that the monuments would not control where they varied from the kind of monuments called for in the record—that a call for a “post” was not satisfied by a “stump”—and further, that in the case of possessory claims the monuments must be kept up so as to be found upon *the ground*—and that otherwise the calls in the location certificate must control, observing that this ruling was essential to prevent the danger of swinging locations.

Maintaining Stakes.—Except in such a case as that mentioned in the preceding paragraph, we know of no instance where, stakes having been once properly and substantially set and the boundaries correctly given in the record, a claimant has been held bound to maintain his stakes, *i. e.* to replace them when destroyed by accident or trespass—but where not maintained, a mere misdescription in the record, otherwise immaterial, may become serious, if not fatal.

RECORD.

Essentials of Location Certificate as Required by R. S. § 2324.
— * * * All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. * * * —*Sec. 5, A. C., May 10, 1872.*

Time to File. What is Required by State Law. Location Certificate.—G. S. § 2399.—The discoverer of a lode shall, within three months from the date of discovery, record his claim in the office of the recorder of the county in which such lode is situated, by a location certificate which shall contain:

First—The name of the lode.

Second—The name of the locator.

Third—The date of location.

Fourth—The number of feet in length claimed on each side of the center of discovery shaft.

Fifth—The general course of the lode as near as may be.—*Feb'y 13, 1874.*

Indefinite Record Void.—G. S. § 2400.—Any location certificate of a lode claim which shall not contain the name of the lode, the name of the locator, the date of location, the number of lineal feet claimed on each side of the discovery shaft, the general course of the lode, and such description as shall identify the claim with reasonable certainty, shall be void.—*Ibid.*

Separate Record of Each Claim.—G. S. § 2412.—No location certificate shall claim more than one location, whether the location be made by one or several locators. And if it purport to claim more than one location it shall be absolutely void, except as to the first location therein described, and if they are described together, or so that it cannot be told which location is first described, the certificate shall be void as to all.—*Ibid.*

The Record Follows the Location, as the location follows the discovery. The record is a publication of the location, and is therefore called the location certificate. Many of the old forms of these certificates are not sufficiently

specific, and the Surveyor-General frequently requires a new record to be made before issuing order of survey, upon application for patent.

Description of Claim. Ties.—The record contains a description of the claim as staked on the ground. If not properly staked, the record does not make a good location; but if the location has been properly made, the record can readily be written so as to describe it fully, whether located by a surveyor or otherwise. The essentials of a valid location certificate are stated concisely in sections 2399, 2400 and 2412 above printed, and a form given below.

The discovery shaft should always be treated as an essential point of description and tied to some near and prominent monument, with course and distance therefrom, because it is a much more permanent monument than any stake or corner.

In addition, one or more corners should be tied to further "natural objects or permanent monuments," a government corner or discovery shaft of an approved survey being unobjectionable.

FORM OF LOCATION CERTIFICATE.

KNOW ALL MEN BY THESE PRESENTS, That I, *Mordecai Collins* of the County of *Pitkin*, State of Colorado, claim by right of discovery and location, *fifteen hundred* feet, linear and horizontal measurement, on the *Famine* Lode, along the vein thereof, with all its dips, variations and angles; together with *seventy-five* feet in width on each side of the middle of said vein at the surface; and all veins, lodes, ledges, deposits and surface ground within the lines of said claim; *seven hundred and fifty* feet on said lode, running *south 85° east* from the center of the discovery shaft, and *seven hundred and fifty feet* running *north 85° west* from said center of discovery shaft.

Said claim is situate on the *eastern slope of Democrat mountain* in *Griffith* Mining District, county of *Clear Creek*, State of Colorado, and is bounded and described as follows, to wit:

Beginning at corner No. 1, (North-west corner of claim,) from which deep shaft of *Pestilence* Lode bears N. 3 degrees, E. 20 feet and "X" chizelled on prominent ledge of rock, bears South 20 degrees, West 90 feet, and running thence S. 2 degrees, East 150 feet to corner No. 2; thence S. 85 degrees, East 750 feet, to South-center

stake; thence, same course 750 feet to corner No. 3; thence North 2 degrees, West 150 feet to corner No. 4. (North-east corner.) from which blazed pine tree 2 feet in diameter marked F., bears N. 8 degrees, West 22 feet; thence North 85 degrees, West 750 feet to North-center stake and thence same course 750 feet to the place of beginning.

From discovery shaft, corner No. 2 of Ajax Lode, survey lot 787, bears S. 27 degrees, East 180 feet, and discovery shaft of Achilles Lode bears South 45 degrees, West 240 feet.

Date of discovery, May 17, 1887; staked and located June 1, 1887. Date of certificate, June 1, 1887.

ATTEST
Emilio D. DeSoto.

Mordecai Collins.

Priority of Record is so generally involved with questions of priority of location and of continued possession that this point has in most cases, less weight than is generally supposed. Record is the inception of the written title, but the actual title of a mining claim, properly followed up, reaches back to the discovery.

But if a discovery be not followed by a location and record within the time fixed by the Statute, an intervening record becomes the prior title. In other words, the rights acquired by discovery are forfeited by neglect to perfect the title by location and record; and that title which if properly followed up would have dated from discovery, will, if it be not so followed up, be suspended in favor of any valid record made after the expiration of three months from the prior discovery, and before any record of such prior discovery.

Or a record filed before the three months have expired, although based on a junior discovery, becomes the senior title the moment the time allowed to the first discovery to complete its record, has elapsed without such record being consummated.

The same rule applies to any senior locator who allows the sixty days allowed for sinking his discovery shaft, to expire without reaching his required depth and finding the required crevice.

Actual Possession without valid Location or Record.—The cases upon this point require careful examination to ascertain the distinctions made and even after such examination manifest inconsistencies appear.

One series of cases states that where a party is in actual possession no stranger can invade such possession in order to initiate an adverse title; in other words a prospector cannot go upon the claim however invalid or defective, to sink a discovery, set up a notice or plant stakes. *Phenix Co. v. Lawrence*, 12 M. R., 261; *North Noonday Co. v. Orient Co.*, 9 M. R., 521. *Weese v. Barker*, 7 Colo., 178.

Certain of the cases hold that he may not invade the actual workings then or lately occupied.—*Falcon v. Barnard*, 9 M. R. 516. Others hold that he may not enter within the lines of the claim.—*Eilers v. Boatman*, 2 Pac. 66.

The above citations can be justified, within certain limits, on the principle of preserving the peace on the public domain. But their logical result, if taken without qualification, would be that a party in possession could hold by his possession alone, in disregard of any of the requirements of the State Statutes or of the Acts of Congress.

On the other hand there are many decisions to the effect that a party, after the lapse of the statutory time to complete location and record, cannot hold against a claim later in discovery but which has been the first to complete a valid location and record under the Statute—that a miner can hold his claim only by compliance with the regulations prescribed by the owner of the fee (the United States) and the State or district regulations which such owner has authorized.—*McKinstry v. Clark*, 4 Mont. 395; *Noyes v. Black*,

Id. 527; *Horswell v. Ruiz*, 7 Pac. 197; *Garfield Co. v. Hammer*, 8 Pac. 153; *Gleeson v. Martin White Co.*, 9 M. R. 435; *Sweet v. Webber*, 7 Colo. 443; *Lalande v. McDonald*, 13 Pac. 349; *DuPrat v. James*, 65 Cal. 555.

No exact rule can be laid down to meet every variation in which the question could present itself, but after conceding that a man's actual occupation of his workings may not be invaded, and that a drift would amount to such actual occupation of the vein for the length of such drift upon the vein above and below; and that an adverse entry would not be allowed so near to, although not actually upon, the workings of the prior party as to threaten to provoke a breach of the peace,—it would seem that after such concessions, the first party having made no record, or no location certificate amounting to a valid record, or having otherwise failed in any essential point necessary to constitute a valid location, the ground would be open to the location and record of a valid claim thereon.

The Supreme Court of the United States says "such location is a condition precedent to the grant. Mere possession not based upon a valid location would not prevent a valid location under the law."—*Belk v. Meagher*, 1 M. R. 534.

Record Complete Before Adverse Rights Initiated.—Notwithstanding delay to record or delay to sink discovery or to set stakes or to find a well defined crevice or to do any other essential act of location, it has been repeatedly and in many forms held that if at length the record or location be in fact perfected before the hostile title had its inception, that the title to such delayed but finally completed location is perfect as to any later initiated title, and that the last act of location relates back to and the title begins from the original date of discovery.—*McGinnis v. Egbert*, 8 Colo. 41.

If all Parties are in Default as to completing their location and record within the time allowed by law, the first record based upon a valid discovery and location takes the ground without regard to priority of discovery.

Possession during Locating Period.—The possession of the prospector during the period allowed by law to complete his location and record is protected, altho' he has so far no paper title. *Erhardt v. Boaro*, 113 U. S., 527.

And his location certificate when recorded relates back to the date of his discovery.

And no party can intrude within his lines marked out or within the ground which he has a right to cover during that period—limited to 750 feet on each end of his discovery, unless his prospector's notice (p. 31) fixes the number of feet claimed each way.

Possession, without valid Location or Record, after such period elapsed.—Possession, at all times, without regard to record, location or even the fee simple, still gives a certain title as against a mere trespasser, upon which ejectment and other actions may be maintained; *Campbell v. Rankin*, 12 M. R., 257; *Hawthurst v. Lander*, *Id.* 214. But as we have already intimated such right by possession yields place at once to right by title, when such title is offered and proved. See "EJECTMENT."

Possession is a title only by sufferance in default of something better—it is the starting point, not the goal of title—and will not prevail against the fee simple; *Courchaine v. Bullion Co.* 12 M. R., 235; or against a title perfected under the district rules; *English v. Johnson*, *Id.* 202: or against a complete location and record made in compliance with the law. *Sears v. Taylor*, 5 M. R. 318.

Extensions.—The paragraph from Sec. 2320, quoted on page 26, of itself disposes of all "extensions" and side claims, unless they be of themselves, howsoever named, independent discoveries and locations.

ABANDONMENT.

District and Territorial Regulations.—The Territorial Legislature by act of Nov. 7, 1861 (G. S. § 2685) gave to the district organizations the right to declare that an abandonment of claims should work a forfeiture. This power was generally exercised by such organizations when in existence, but their rules have become in Colorado a reminiscense. It also in 1866 (Territorial Rev. Stat. 467) passed a temporary act concerning certain claims at that time unworked. There is no State Statute on the subject.

Confined to Possessory Titles. Associated with Annual Labor.—Although the title to mining claims has been at all times of that class which might be lost by abandonment, (*Ferris v. Coorer*, 10 Cal. 631,) and although a technical abandonment may at this day be proved with regard to any sort of possessory title, the subject has lost much of its importance except in connection with the annual labor acts.

Abandonment is a question of fact, and the fact is to be found from the intention.—*Myers v. Spooner*, 9 M. R. 519; *Mallett v. Uncle Sam Co.*, 1 M. R. 17; *Oreamuno v. Uncle Sam Co.*, *Id.* 32. Desertion and abandonment are equivalent terms.—*Derry v. Ross*, 1 M. R. 1.

Abandonment being thus a matter of intention, it follows that if even after doing his work the miner should deliberately leave it or express permission to others to occupy it, such manifest proof of intent would establish abandonment, though such intent would have to be strictly

proved; but for all practical purposes the performance of the annual labor is the test, and the law of annual labor involves no question of intent.—*Depuy v. Williams*, 5 M. R. 251.

How Proved.—Lapse of time, though not conclusive, is an incident tending to prove abandonment.—*Mallett v. Uncle Sam Co.*, 1 M. R. 17. Leaving tools in the mine tends to disprove it.—*Harkness v. Burton*, 9 M. R. 318.

Subjects of Abandonment.—A leasehold interest, water, slag and tailings, are things which may be lost by abandonment.—*Barker v. Dale*, 8 M. R. 597; *Dougherty v. Creary*, 1 M. R. 35; *McGoon v. Ankeny*, *Id.* 9.

Pleading.—Abandonment need not be specially pleaded.—*Bell v. Bed Rock Co.*, 1 M. R. 45; *Willson v. Cleveland*, 30 Cal. 192.

ANNUAL LABOR.

Annual Expenditure.—R. S. § 2324. * * * On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the **first day of January, eighteen hundred and seventy-five*, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these condi-

*NOTE.—In the Revised Statutes of the United States, the date printed is June 10, 1874, the compilers having overlooked the second Act extending time, approved June 6, 1874.—*U. S. Statutes at Large*, Vol. 18, part 3, page 61.

tions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. * * *
—*Sec. 5, A. C., May 10, 1872.*

Agreement between State and Congressional Act.—§ 14.—The amount of work done, or improvements made during each year, shall be that prescribed by the laws of the United States.—*Feb'y. 13, 1874.*

The above section was passed to harmonize any possible difference between local and Congressional Law on this subject, but was carelessly repealed by Act of Feb. 4, 1876, (1876, p. 95.) Neither its passage nor repeal, however, were of importance, as no State Legislation could either strengthen or nullify the Act of Congress.

Amendment of 1880, Adopting the Calendar Year.—§ 2.—That section twenty-three hundred and twenty-four of the Revised Statutes of the United States be amended by adding the following words: "*Provided*, That the period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim, and this section shall apply to all claims located since the tenth day of May, anno Domini eighteen hundred and seventy-two." *Approved Jan. uary 22, 1880.*

Not required by Statute before 1872.—Annual labor was not required by either Territorial or United States Law until after the passage of the A. C., May 10, 1872.

It was, however, often required by District Rules.—By some of these rules a man was bound to do some work upon his claim every week, or every month, but these rules had invariably fallen into disuse at the time of the passage of the Act referred to.

The idea of annual or periodical labor is not new; it was a part of the Spanish system, and generally prevailed on the Pacific Slope.

The A. C., May 10, 1872, divided lodes into two classes with respect to labor: 1st. Lodes located before its passage. 2d. Lodes located after its passage.

Work on Claims Located Before May 10, 1872.—The amount of labor required on all lodes was \$10 for each hundred feet, but where claims were held in common, the whole amount of work might be done on one claim. The time for the first work on old lodes was originally fixed to expire May 10, 1873, *i. e.*, one year after the passage of the Act. It was further extended to June 10 1874, and finally postponed to January 1, 1875.

The Act of 1880 makes no change either in the amount or time of annual labor on old claims. It has always been and still is, \$10 for each 100 feet during each year of our Lord, beginning January 1, 1875; and the time between May 10, 1872, and January 1, 1875, constituted the period for the first required labor,

Where the lode consists of undivided claims of 100 or 200 feet each, as in the case of almost all locations made before May 10, 1872, any one or more claims may be saved by the expenditure of \$10 worth of labor to each 100 feet which the owner desires to segregate and hold, leaving the remainder to forfeiture; or when the series of claims are held in common, the full amount may be expended upon any one claim, whether they were originally recorded as joint or as several locations; but in all cases where less than the amount required to hold the entire lode is expended, the owner, in his proof of labor, should state the work as done for the purpose of holding only so many feet, designating where they lie upon the lode.

Work on Claims Located Since May 10, 1872.—The various extensions of time for work on old lodes did not apply to the new lodes. The period for the

first work was never extended, nor has any change been made except the Act of 1880; but the change made by that Act is both material and beneficial. The annual period for labor on claims located since May 10, 1872, began on the *date of location*, and this date was hard to fix with exactness. It might have been the date of discovery, or any date intermediate between discovery and record. The Act of 1880 makes the annual period now coincide with that fixed for old claims, to-wit, each calendar year.

Each Claim an Entirety. Work on Subdivided Claim.—The 1500-foot lodes being single claims of that length and a certain amount of work being required upon the *claim* and the clause as to "*each 100 feet in length along the vein*" not applying to these new locations, it does not seem that a party, by expending any portion of the full amount, can save any fractional portion of his lode. But if a party own a segregated portion of such claim: Is he required to do the full amount essential to hold a claim, in case the other owners refuse to contribute?

It seems he is under this necessity, and each interested party must see for himself that the amount required to hold the claim is done by some person, and if the whole burden falls upon one party, the rest of the claim becomes forfeit to such party. There is no distinction made between those who own separate feet and those who own undivided interests in the claim.

The word "co-owners," used in the Act, does not appear to be used in its ordinary acceptance, as tenants in common, but to include all the owners, either in common or after they have segregated their interests; the claim seems to be treated as an individual item so far as the relations between the Government and the miner are concerned; if, therefore, all the labor is performed by the owner of the

East end, he may claim forfeit of the West end; or if it is all performed by the owner of an undivided half, he is in position to become the sole owner by proper notice under the forfeiture clause upon refusal of the other co-tenant to contribute his proportion. But this is only the *apparent reading* of the Act as to claims which have been segregated into several parts, and would give a benefit to a party who had no more connection with the other end of the claim than a mere stranger. Consequently this can only be treated as a suggestion of the true construction of an Act which is so worded as to be entirely ambiguous on this point.

\$500 Work Already Done.—The fact that sufficient improvement (\$500 worth,) has been done to authorize application for patent, does not dispense with the necessity for the annual expenditure.

Annual Labor after Entry.—It has been decided that annual labor cannot be required after entry in the Land Office, although the patent has not yet been formally issued; and such decision is clearly correct, because the patent, when it issues, relates back to the date of entry, and so satisfies the wording of the Act, which requires the annual labor each year “until patented.”—5 *Land Owner*, 114. Nevertheless, in such case, a party runs the risk of the consequences in case his Receiver’s receipt should be canceled.

Time During Which Labor Must be Completed.—On all lodes located before or since May 10, 1872, the year for doing the labor is each *year of our Lord*, beginning January 1st, and ending December 31st, always noting that since the act of 1880 no annual labor is required during the year the location is made. *Hall v. Hale*, 8 *Colo.*, 351.

Each Annual Period an Entirety.—The owner has the whole of each year to do his \$100 worth of work or

make his \$100 worth of improvements. *Belk v. Meagher*, 1 *M. R.* 522. *Atkins v. Hendree*, 2 *M. R.*, 328.

It therefore follows that if, for instance, he has expended \$100 during the first month of the first year he may wait until the twelfth month of the second year before he does his second year's work. That such is the law admits of no doubt upon the reading of the Act. At the same time the disposition to take advantage of this fact leads to delays which often ultimate in allowing the whole time to pass by and the claim becomes liable to re-location.

What Counts for Improvements.—Any work done for the purpose of discovering minerals is improvements within the spirit of the Statute.—*U. S. v. Iron-Silver Co.*, 24 *Fed.* 568. Road building counted as annual labor.—*Mt. Diablo Co. v. Callison*, 9 *M. R.* 616. Flumes, drains or the turning of a stream or the sinking of a common shaft will count.—*St. Louis Co. v. Kemp*, 11 *M. R.* 692.

What Will Not Count.—A house for use of the miners built 200 feet away from the claim cannot be considered as annual labor.—*Remington v. Bandit*, 9 *Pae.* 819.

Dumping tailings on a claim is no improvement.—*Jackson v. Roby*, 109 *U. S.* 440. Traveling and expenses in getting ready to go to work can not be considered.—*McGarrity v. Byington*, 2 *M. R.* 311; *DuPrat v. James*, 65 *Cal.* 555. Nor work done by third parties and bought in.—*Little Gunnell Co. v. Kimber*, 1 *M. R.* 536.

Work Done Outside of Claim or on Group of Claims.—Work done beyond the lines will count when it has direct reference to the drainage or development of the claim.—*Packer v. Heaton*, 4 *M. R.* 447; *Kramer v. Settle*, 9 *M. R.* 561; *Mt. Diablo Co. v. Callison*, *Id.* 616. Where sundry claims are worked together as one group, the devel-

opment work, though confined to a single claim, may count for all.—*Jupiter Co. v. Bodie Co.*, 4 M. R. 413; *St. Louis Co. v. Kemp*, 11 M. R. 692.

Amount, how Estimated. District Rules.—

As to such District Rules as attempt to fix the value of a day's labor above its real cost in estimating the amount of work done, they amount to absolutely nothing. The "fiat" does not alter the "fact." The true measure is the real cost. And if the work has been done, or the materials furnished by the owner himself, the measure of value is what it would have cost to procure the same labor and materials from a second party. In other words, the market value of the labor and materials.—*Quimby v. Boyd*, 8 Colo. 194, 342.

Performance of Annual Labor After the Year has Expired. Two Parties Essential to Forfeiture.—

The neglect to do the annual labor required by the United States Government by no means works a forfeiture of the claim. To illustrate: If a lode was located in 1880 and after that year no annual work was done until 1886, (when a period of five full years would have intervened) and in 1886 the owner enters and performs his \$100 worth of work for that year, he continues to be the owner of the claim, and his title relates back to the original location of 1880; *provided always*, that the lode has not been re-located in the meantime.

It requires two parties to make a forfeiture absolute: 1st, the party who abandons; and 2d, the party who re-locates. The second party therefore must take advantage of the first party's default before such default can enure to the second party's benefit.

The fact that failure to do the work does not *ipso facto* work a forfeiture and the fact that advantage of the default must be taken by some adverse party is important in several classes of cases.

1st. Where the work done before the neglect is necessary to complete the \$500 worth of improvements required before patenting.

2d. Where in cases of ejectment between two claims it is necessary to prove priority and carry the title back to the original location.

3d. Where a party has neglected to do his annual work and a third party has entered for purpose of relocation.

4th. The fact that neglect to do one or more year's labor does not, *ipso facto*, operate as a forfeiture, is of special importance in the case of overlapping claims, where the junior claim has been worked and the senior claim has not been worked.

1. Where the work done before the neglect is necessary to complete the \$500 worth of Improvements required before patenting—If failure to do one year's work operates, *ipso facto*, to defeat the location, in such case the title would have to date from the date of resumption; in fact, a new location would have to be made by the owner. But the failure not having been in due time taken advantage of, the old title remains, dates from original discovery, and consequently old work and new together count as improvements on the claim for purposes of patenting.

2. Where it is Essential to Carry the Title back to Discovery.—The remarks of the foregoing paragraph apply also to this heading. The doctrine of relation

always carries a title back to the first step in its inception, always excepting where an adverse right has intervened. As the failure of itself works no forfeiture, the continuity in this case is not broken. A location, however, made over a claim where the work has not been done before *bona fide* resumption by the owner would break this continuity and would take the conflict, whether it purported to be a relocation of the defaulting claim or only incidentally took some of its ground.

3. Where a Third Party has entered for purposes of Re-location.—The words of the Act relative to the latter class of cases are as follows:

“Provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location.”

If this location, or rather relocation of the third party is complete before the re-entry of the original owner, of course the original owner is too late. If, on the other hand, the original owner has *bona fide* resumed work before the attempted relocation, his original title becomes revested the moment he has completed an amount of work equivalent to that required for the previous year. But where the third party has entered, and before he completes his location, the original owner also enters and resumes work, the question remains: Is such re-entry of the owner sufficient to defeat the intervening claimant? The Act says that the owner may resume work at any time “Before such location.” The location of the intervenor is not complete until he has done certain acts, usually requiring several days to consummate. The locator must sink a shaft ten feet in depth, and set his stakes. In the meantime has the original owner the right to resume work? It was so decided by *Stone J.*, in the case of *Graydon v. Hood*. In that suit the Griffith Lode was shown to be an 1861 discovery. No work had been done

for the year 1875. As soon as the time had expired, or was about to expire, the defendant entered and began to sink a new discovery shaft. Within a few days after December 31st, plaintiff re-entered and finished his annual work before the defendant had completed his discovery to the lawful depth: *Held*, that the plaintiff had saved the forfeiture by performing such labor before the defendant had completed his location. The case of *Gonn v. Russell*, 12 M. R. 630, holds the same, in terms, without any equivocation. On the contrary, *Hallett J.* in the case of the *Little Gunnell Co. v. Kimber*, 1 M. R. 536, held that the party attempting to take up abandoned property has the same period of three months to complete his location, which is allowed by law to a discoverer; and *Pelican Co. v. Snodgrass*, 9 Colo. 339, is to the same effect.

I have little doubt of the correctness of the latter opinion. "The condition of development should be attached to every mine; and courts should, as far as consistent with legal principles, maintain the construction of mining customs which accomplish this end." *King v. Edwards*, 4 M. R. 480; *Russell v. Brosseau*, 65 Cal. 605.

In *Belcher Co. v. Deferrari*, 62 Cal. 160, the plaintiff did only one-half the required amount in 1880. In Jan., 1881, he did \$24 worth of work on two claims. Defendant relocated in August, 1881. *Held*, that the plaintiff had resumed work and was entitled to recover. Such a decision is only trifling with the law and the rights of parties based on the law.

A Re-location Begun Before the Year Expires is Void.—*Belk v. Meagher*, 1 M. R. 522. The case cited so decides, but it would certainly seem that if the party whose claim was taken did not either resume work or take steps

to recover by law until after the expiration of the ensuing annual period that his laches would operate to validate such a relocation, although begun before the proper time.

4. Work not done by Senior Claim Over-lapped by Junior Claim.—This does not transfer the title of the over-lapping portion from the senior to the junior claim, unless the junior lode makes its relocation, taking up the over-lapping ground. This it may do as specially provided in § 2409 of the General Statutes, in the clause:

"If at any time the locator of any mining claim * * * * shall be desirous * * * of taking in any part of an over-lapping claim which has been abandoned, * * * such locator, or his assigns, may file an additional certificate,"—

the same as provided for in other cases of relocation by the same section.

Equity of the Annual Labor Law.—The opposition to the requirement of annual labor so evident when first required by the Act of 1872, has gradually yielded to a concession of its equity even in the case of claims located before its passage.

The holder has no just right to prevent the Government disposing of such claims as he is unwilling or unable to work, to such as are ready to assume the risk and develop the deposit, the estate of the holder not being absolute, but by implied contract and general mining custom conditioned upon development; of which development the Government has merely fixed the amount by the Act of 1872, and that at a reasonable limit.

Development is the condition upon which the Government allows the miner to hold his possessory title and afterwards perfects it by patent. *Erhardt v. Boaro*, 113 U. S. 527; *O'Reilly v. Campbell*, 116 U. S. 418; *Kramer v. Settle*, 9. M. R. 561.

Proof of Annual Labor.—That section 2410, of the General Statutes, being section 26, of chapter LXXIV, thereof, entitled "Mines," be, and the same is hereby amended so as to read as follows:

2410. Sec. 26. Within six months after any set time or annual period, allowed for the performance of labor or making improvements, upon any lode claim or placer claim, the person on whose behalf such outlay was made, or some person for him, may make and record in the office of the recorder of the county wherein such claim is situate, an affidavit in substance as follows: ,
STATE OF COLORADO, } ss.
..... County, }

Before me, the subscriber, personally appeared
..... who, being duly sworn, saith, that at least
dollars' worth of work or improvements were performed or made
upon (here describe claim or part of claim), situate in.....
mining district, county of, State of Colorado, between
the day of A. D. and the
day of A. D. Such expenditure was made by
or at the expense of
owners of said claim, for the purpose of complying with the law
and holding said claim.
Jurat.

(Signature.)

And such affidavit, when so recorded, shall be *prima facie* evidence of the performance of such labor or the making of such improvements. Sec. 1. *Mat.* 31, 1887, p. 342.

The above act is a re-enactment of Sec. 15 of the Act of Feb. 13, 1874, altered so as to include placer claims, and making a change in the form of affidavit, so as to state for what year the work was done.

Failure to File Affidavit of Labor.—The neglect to file proof of labor, if the labor has in fact been done, would not leave the lode open to relocation, and the doing of the labor can be shown by oral testimony.—*McGinnis v. Egbert*, 8 *Colo.* 41. But the precaution to file should by no means be neglected. The filing makes out the proof of the fact of the labor being done, which might afterwards be a difficult matter to show.

The great objection to annual labor, with the professional mind, is that it throws a mining title upon constant proof, takes it out of the chain of title as found recorded, and makes it depend upon the existence of facts which do

not appear of record. This evil should be obviated as far as possible by precautions, such as are above suggested; but, after all, the result remains, that no claim can be considered secure until a patent is obtained, and the title reduced to a record basis, and to certainty.

FORM OF AFFIDAVIT OF LABOR PERFORMED.

STATE OF COLORADO, } ss.
Summit County, }

Before me the subscriber, personally appeared *John A. Willoughby*, who being duly sworn, saith that at least *one hundred* dollars worth of work or improvements were performed or made upon the *Chaos Lode*, situate on *Silver Mountain*, in *Avalanche* Mining District, County of *Summit*, State of Colorado, between the first day of January, A. D. 1886, and the 31st day of December, A. D. 1886. Such expenditure was made by or at the expense of *John A. Willoughby*, owner (or one of the owners) of said claim, for the purpose of complying with the law and holding said claim.

John A. Willoughby.
Sworn and subscribed before me this *first* day of *January*,
A. D. 1887. [SEAL.] *Breeze,*
Notary Public.

A single affidavit may be filed for the labor on several claims.—*McGinnis v. Egbert*, 8 Colo. 41. And it may be filed before the year elapses.—*Id.*

FORFEITURE TO CO-OWNER.

By Failure to do Annual Labor. Notice.—R. S., § 2324.— * * * Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures.—*Sec. 5, A. C. May 19, 1872.*

Expenditures in Excess of the Statutory Amount.—Although one co-owner has expended more than enough to hold the claim, the delinquent co-owner to save forfeiture under the Act of Congress, is only required to pay or tender his proportion of the amount which the law required to be expended upon the claim.

The recovery of his proportion of additional expenditures depends upon other grounds, and is to be enforced only by judicial proceedings, involving the question of mining partnership, or the expressed or implied assent of the co-owner to the expenditure of the additional amount.—*In re Brooks*, 5 *Land Owner* 4.—*Newman v. Dreifurst*, 9 *Colo.* 228; *McCord v. Oakland Q. Co.*, 49 *Am. R.* 689.

If there are Three Owners and one performs all the Labor, and gives notice to his co-owners, and one of them pays his proportion and offers to pay one-half and join in the division of the forfeited claim of the third party, I apprehend the second party may refuse such proposition, the forfeiture accruing solely to him who has performed the labor.

Estoppel.—When a co-owner is delinquent, but the party who has made the expenditure afterwards associates with him in developing the claim, it would probably be considered a waiver of the forfeiture.

Preservation of Proof.—The presumption in law is always against forfeiture, and the party who claims it must be prepared to make his proof in such case: therefore besides recording the notice, with affidavit of publication, the party should make declaration of the facts of the case, under which he claims forfeit, verify and record the same; not that such, of itself, would be evidence, but as furnishing notice to purchasers, and also a record which the land office would doubtless receive in application for patent, or upon adverse claim.—5 *Land Owner* 4.

PROCEEDINGS TO ENFORCE FORFEITURE AND TO MAKE THE SAME APPEAR OF RECORD.

In the first instance file the usual affidavit of labor performed, in the form given on page 64.

The demand upon the delinquent must be then made by service of what is commonly called the "Forfeiture Notice." If this is served in person the forfeiture is complete in ninety days; if by publication, which must be in the newspaper published nearest the claim, the forfeiture, *it seems*, is not complete until ninety days after the last publication. The following is the form of the

FORFEITURE NOTICE. (A).

GEORGETOWN, Colorado,

January 3, 1887.

To Sam P. Rose:—

You are hereby notified that I have expended *one hundred dollars* in labor and improvements upon the *Fairfax Lode*, situate on *Republican Mountain*, in *Griffith Mining District*, County of *Clear Creek*, State of Colorado, of which the location certificate is found of record in Book 20, Page 222, in the office of the recorder of said county, in order to hold said claim under the provisions of section 2324 of the Revised Statutes of the United States, and the amendment thereto approved January 22, 1880, concerning annual labor upon mining claims, being the amount required to hold said lode for the period ending on the 31st day of *December, A. D. 1886*. And if, within ninety days from the personal service of this notice, *or within ninety days after the publication thereof*, you fail or refuse to contribute your proportion of such expenditure as a co-owner, your interest in the claim will become the property of the subscriber by the terms of said section.

Wm. Spruance.

If the demand contained in this Forfeiture Notice is not complied with, within the prescribed period, it should be recorded after making proof of its service or publication, which can be most readily done by endorsement upon the Notice "A" as follows:

PROOF OF FORFEITURE. (B).

Where the Forfeiture Notice has been personally served.

STATE OF COLORADO, }
County of *Clear Creek*, } ss.

William Spruance being duly sworn saith: That he served the within forfeiture notice upon *Sam. P. Rose*, the delinquent co-owner therein named, upon the 17th day of *March, A. D. 1887*, at said county, by delivering to him a true copy of the same and explaining the contents thereof; and that said *Rose* wholly failed to comply with the demand contained in said notice during the period of ninety days after said date or at any time since hitherto.

William Spruance.

Sworn and subscribed to before me this second day of July,
A. D. 1887.

[SEAL.]

Frank J. Hood,
Notary Public.

The above form completes the proceeding where the notice has been personally served, but where it has been by publication, discard the form "B," and use the following "C" and "D."

PUBLISHER'S PROOF OF FORFEITURE. (C).

STATE OF COLORADO, }
County of *Clear Creek*, } ss.

[Copy of Notice "A" Attached.]

Jesse S. Randall being duly sworn, saith, that he is publisher of the *Georgetown Courier*, a weekly newspaper published in said County, nearest to the said *Fairfax* Lode Claim, and that the above notice was published in said paper fourteen successive weeks, the first publication appearing in the issue of *May 5, 1887*, and the last publication in the issue of *August 4, A. D. 1887*.

Jesse S. Randall.

Sworn and subscribed to before me this fifth day of August,
A. D. 1887.

[SEAL.]

Frank J. Hood,
Notary Public.

Upon the publisher's proof, (C) the party who has done the work will endorse his affidavit of non-payment as follows:

AFFIDAVIT OF NON-PAYMENT. (D).

STATE OF COLORADO, }
County of *Clear Creek*, } ss.

William Spruance, being duly sworn, saith that *Sam. P. Rose*, the person named in the forfeiture notice attached to the within

proof of publication, wholly failed to comply with the demand contained in said notice during the period of said notice or within ninety days thereafter.

William Spruance.

Sworn and subscribed before me this seventh day of November, A. D. 1887.

Frank J. Hood,

[SEAL.]

Notary Public.

These forms, "A" and "B," in cases of personal service, and "A," "C" and "D," in cases of advertisement, complete the forfeiture and place its proof in a shape where it is recognized in all Land office proceedings as the equivalent of a deed from the delinquent party; but when the forfeiture has to be proved in court, these *ex parte* proceedings would not be recognized except the publisher's proof, which is made evidence by statute G. S., § 1315.

RELOCATION OF ABANDONED CLAIMS.

Statutory Regulation of Such Re-Location.—G. S., § 2411.—The relocation of abandoned lode claims shall be by sinking a new discovery shaft and fixing new boundaries in the same manner as if it were the location of a new claim; or the relocater may sink the original discovery shaft ten feet deeper than it was at the time of abandonment, and erect new or adopt the old boundaries, renewing the posts if removed or destroyed. In either case a new location stake shall be erected. In any case, whether the whole or part of an abandoned claim is taken, the location certificate may state that the whole or any part of the new location is located as abandoned property.—§ 16, *Feb. 13, 1874.*

In the relocation of abandoned claims, the party locates and records with the same particularity as in making an original location or record.

It has been held that a relocation cannot be made on a blind working—a drift which had been run underground from the bottom of a shaft on an adjoining claim.—*Little Gunnell Co. v. Kimber*, 1 M. R. 536.

The fact of improvements already on the ground does not lessen the labor required from the relocater; he must do at least ten feet of sinking on the old, or on a new discovery shaft; must erect a new stake, and unless he adopts exactly the old location, he must sink new posts, or at all events must see that his boundaries are established on the ground.

The relocater is not required to do the labor for neglect of which the claim was forfeited, although a substantial relocation might require as great an expenditure; nor if it be an abandoned 1600 or 3000-foot claim, can it be relocated upon one shaft for more than 1500 feet. It is substantially a location, the same as if no former location or record had ever been made.

After the annual period has expired, the old claimant has still the first right; but if he has commenced work before another party enters, he must complete the full amount required with reasonable diligence, as otherwise the claim would remain forfeit.

Relocation of Abandoned Claims by a Co-tenant.—Where the several owners of a claim have allowed the annual period to expire without doing the annual labor it is asserted that any one of them may enter upon the ground and relocate the claim in his own name, leaving out his former co-tenants. The Statute says that after the year has expired without the labor being done, the claim

"Shall be open to relocation in the same manner as if no location of the same had ever been made."—*R. S.* § 2324.

But these words are immediately followed by a *proviso* which seems to make a distinction between the rights of the old owners and the rights of strangers. It is certain that if all the owners return to the claim their title would relate back to the original discovery; and it is also a rule of law that a tenant in common cannot rightfully do any act which

is subversive of his co-tenant's title, and quite as certain that if he were allowed to relocate as a stranger he must yield his prior claim absolutely, and proceed in all particulars as an entire stranger. The question, therefore, whether a single co-tenant can relocate at all, is involved in great doubt. It was held that he could do so in the case of *Strang v. Ryan*, 1 M. R. 18, but that was a case of forfeiture under district rules.

In *Saunders v. Mackey*, 6 Pac. 361, a co-owner had agreed to see the work done; he did not do it, and afterwards was a party to a relocation. The Court held that the failure operated to defeat the old location, and that the relocation was valid; but did not pass on the point as to whether or not the new location should be held in trust for the promisee.

RELOCATION OF CLAIMS NOT ABANDONED.

In What Cases Owner May Relocate.—G. S. § 2469. —If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries, or of taking in any part of an over-lapping claim which has been abandoned, or in case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefits of this Act, such locator, or his assigns, may file an additional certificate, subject to the provisions of this Act; *Provided*, that such relocation does not interfere with the existing rights of others at the time of such relocation, and no such relocation or other record thereof shall preclude the claimant or claimants from proving any such title or titles as he or they may have held under previous location. — § 13, Feb. 13, 1874.

This is one of the most important sections of the State Mining Act; it provides an escape from the consequences of the loose and careless records of many valuable claims;

it also gives the older claims the opportunity to take the full width allowed by the new law; and further, in case a lode is found to be not contained in the original boundaries, it allows the error to be corrected. All former rights are secured with the new privileges, and greater certainty obtained under the relocation.

In a relocation under this section the name of the lode should not be changed, and the certificate should show that it is a relocation and of what lode.

FORM OF CERTIFICATE OF RELOCATION.

KNOW ALL MEN BY THESE PRESENTS, That I, *Bela M. Hughes*, of the County of *Arapahoe*, State of *Colorado*, claim by right of relocation, *fifteen hundred* feet, linear and horizontal measurement, on the *Kentucky* Lode, along the vein thereof, with all its dips, variations and angles, together with *seventy-five* feet in width on each side of the middle of said vein at the surface; and all veins, lodes, ledges and surface ground within the lines of said claim; 750 feet on said lode running *north 10 degrees east* from the center of the discovery shaft, and 750 feet running *south 10 degrees west* from said center of discovery shaft. Said discovery shaft being situate upon said lode, within the lines of said claim, in *Silver Cliff* Mining District, County of *Custer*, State of *Colorado*; said claim being bounded and described as follows: Beginning at corner No. 1, (*etc.; describe as in case of original location, and conclude as follows:*) Being the same lode originally located on the *first* day of May, A. D. 1884, and recorded on the *first* day of June, A. D. 1884, in book 7, page 11, in the office of the recorder of said county. This further certificate of location is made without waiver of any previous rights, but to correct any error in prior location or record, to secure all abandoned overlapping claims, and to secure all the benefits of section 2409 of the General Statutes of Colorado. Date of relocation, June 7, 1886. Date of certificate, June 8, 1886.

Bela M. Hughes.

Attest: *Jere Mahoney*

Same Particularity as in Original Location.—

The discovery shaft, side and boundary posts, must be found on the ground before any second record is made, and if the relocation changes the boundaries or is made on account of any previous mistake or irregularity, the same should be rectified before recording; and if any substantial change is made in the description, it should be set forth.

A new location stake should also be erected at the discovery, although possibly, neglect to erect a new stake or notice might not be fatal, because the old stake could be considered as answering all purposes of notice the same as the old discovery shaft which does not need to be sunk to any greater depth if it has already the legal depth of ten feet—that is, ten feet measured under the present law. In fact no change whatever upon the ground is necessary if the original location was perfectly regular, and the only idea in relocating is to formally appropriate abandoned interferences or to correct mistakes in the record.

Any attempt to alter the number of feet claimed on each side would be an abuse of the intentions of the Act unless the new ground taken up continued wholly vacant.

The intent of the Act is: 1st, to provide a recognized mode of relieving from the consequences of clerical and other mistakes; and 2nd, to give to old locations the benefit of the additional width allowed under the new Act. It will hardly, therefore, be construed to allow to any old location more than it could claim as an original, nor could it, without being retrospective, relieve against any intermediate adverse rights, accrued prior to the relocation.

The practical result has been, that many of the old 3000-foot claims have been cut down, the shorter claims increased, and the old claims widened, so as to produce a uniform size of claim in length and breadth.

Amended Certificate, without Relocation.—

An additional or amended location certificate may be filed on old 3000-foot claims for mere purpose of more specific description, but such claim cannot increase its width and at the same time retain its old length.

An additional or amended location certificate is also frequently filed upon new claims for the purpose of correct-

ing or making more particular the original record. This is in strictness not a relocation, but an additional certificate of the original location, and while the above form would answer without change, the following is more exact in cases where no change is made in the boundaries and no error except indefinite description is to be corrected, and no overlapping ground to be taken up :

AMENDED LOCATION CERTIFICATE.

KNOW ALL MEN BY THESE PRESENTS, That I, *Maurice W. Levy*, of the county of *Sedgwick*, State of *Kansas*, do hereby make and file this, my amended certificate of location upon the *Evolution* Lode Mining claim, situate in *Roaring Forks* mining district, county of *Pitkin*, State of *Colorado*, claiming *one hundred and fifty* feet in width on each side of the center of said lode at the surface, and all veins, lodes and ledges within the lines of said claim, with their dips, variations and angles; *one thousand* feet on said lode running *north 33 degrees east* from center of discovery shaft, and *five hundred* feet running *south 22 degrees west* from said center of discovery shaft. Said lode mining claim is bounded and described as follows, to-wit: Beginning at corner No. 1 (*describe by metes and bounds with ties from surveyor's notes*) being the same lode of which the original location certificate (made by *Samuel Levy*) is filed in book 17, page 51, in the office of the clerk and recorder of said *Pitkin* county. This amended certificate is filed without waiver of any previous rights, for the purpose of correcting and making more specific the boundaries and description of said lode as originally located upon the ground.

Date of original location, April 12, 1885. Date of certificate, July 4, 1887. *Maurice W. Levy.*

Such amended location certificate may be filed even after suit commenced (*Strepey v. Stark*, 7 *Colo.* 614); and it has been held that it relates back, where adverse rights have not intervened, to the date of the original location, (*McGinnis v. Egbert*, 8 *Colo.* 41); and in the case of *McEvoy v. Hyman*, 25 *Fed.* 597, that it operated to cut out an intervening claim—being carried by relation back to the date of the original record; but this extreme holding discards the *proviso* of *G. S.* § 2409, which was inserted to prevent such retrospective effect where adverse rights had arisen.

UNITED STATES PATENT.

Policy of the Government as to Mineral Lands.

—The policy of the United States has always been to pass the fee simple title of its lands to the ultimate purchaser, but to guard against monopoly and aid the actual occupant by requiring improvements to be made; yielding first a possessory title, to be followed by a patent only after a due length of time upon proper proof of occupation on the part of the purchaser.

A temporary departure from this rule was made in the attempt to lease the lead and copper lands on the Mississippi and Lake Superior.—*Lorimier v. Lewis*, 12 M. R. 437.

Salines have also been generally held under special reservations.—*Morton v. Nebraska*, 12 M. R. 451. *In re Eagle Salt Works*, 5 Land Owner 4.

The Government had no occasion to deal with lands containing the royal metals until the acquisition of California, upon which event, instead of adopting any system of legislation, it merely reserved the mineral lands from sale and acquiesced in the asserted rights of the prospector and miner until 1866.

In that year was passed the first of what are known as the Mining Acts, now embraced in Title 32 of the Revised Statutes. This was followed by the Acts of 1870 and 1872, with other slight amendments.

The ultimate intent of these Acts is to pass the fee simple to the discoverer of a mine or his grantees, after a

certain amount of development has been made upon the claim, and until final entry the locator holds by a possessory title.

Progression of Title.—Title becomes initiate by discovery; the possessory title is complete upon location and record; after entry in the Land Office, although the title is still technically equitable in its nature it amounts practically to the legal or fee simple, because:

1. The Land Office receipt for purchase money is made evidence of title by statute.—*G. S.* § 1310.

2. The subsequent issue of the patent follows as a mere ministerial act, except where some irregularity has occurred in the application.

3. Before entry is allowed the time for the assertion of any adverse title must have elapsed.

4. Upon the issuance of patent, the fee passes to the purchaser, and the title relates back in all cases to the entry at least.

Choice of Land Systems.—It was in the power of the United States to have adopted any one of several different systems in the disposition of its mineral lands; but at some stage, under any system, a decision of the conflicting equities between the adverse claimants, would have to be reached.

1. A system based on rectangular surveys, upon which a Block Book could be platted which would, on its face, establish the priority of any assertion of title to the Block representing any certain mining claim, analogous to the method adopted by the British Government with reference to the Australian gold fields, and the same in outline as the system adopted in case of agricultural lands, the departure

from which in yielding to absurd prejudice in favor of obsolete district rules, has caused nearly all the contention which is now common.

2. A system under which every applicant would receive a patent upon an *ex parte* proceeding without regard to priority or adverse rights, leaving the several patentees to contest their equities in the courts upon an equal footing, analogous to the old land system of Virginia.

3. A system based on making the proceeding to obtain patent a proceeding *in rem*, compelling the applicant to give notice of his application and forcing an adjudication of all adverse equities before the issue of the patent, which was the Pennsylvania system.

The last is the system adopted by the Government, by the original Act of 1866, and continued in all the amendments.

Title Adjudicated and Priorities Settled before Patent Issues.—The result follows that upon the issue of a patent the patentee has cleared up all equities against him, and all supposed prior discoveries and locations which might have interfered with him are lost, by failure to assert them as adverse claims, or to prove them in the ejectment suit brought in support of the adverse claim.—*Silver Bow Co. v. Clarke*, 5 Pac. 570; *Ranheim v. Dahl*, 9 Pac. 892.

The publication required by the Mining Acts "is in effect a summons to all persons whose interests may be affected by the issuance of a patent," to appear and file their adverse claims.—*Woffley v. Lebanon M. Co.*, 13 M. R. —; *Wight v. Dubois*, 21 Fed. 693.

The Doctrine of Relation. Failure to Adverse.—The question then of the priority of title between two patents supposed to cover the same vein ceases to be a question of prior discovery or prior location, and rests upon

such priority as is obtained by proceedings which ultimate in the issue of a patent. The question of real difficulty is when to fix this date. It relates as far back as the date of entry beyond all doubt, although it is quite possible for a party who has completed his notice, posting and all other preliminaries, to delay, or be delayed in, final entry and payment for a considerable period. The entry when made excepts all previous approved surveys; the official survey when approved excepts all previous approved surveys; upon the official survey, or at least upon the approval of the official survey in the Surveyor-General's office is the first period at which the officers of the United States recognize the segregation of the claim from the mass of the public domain; from this point the claim so first segregated must, under the practice of the Land Office and Surveyor-General's office, be recognized by all subsequent applicants for survey, as prior in point of time, and they are compelled to except from their claims such previously approved survey.

Back to the entry then, but no further, it would seem that the doctrine of relation may carry the patent, any priority in discovery, location or otherwise, being lost by the failure to file or successfully support an adverse claim. —*Eureka Co. v. Richmond Co.*, 9 M. R. 578; 420 *Mining Co. v. Bullion Co.*, 11 M. R. 608; *Golden Fleece Co. v. Cable Co.*, 1 M. R. 120; *Kahn v. Old Telegraph Co.*, 11 M. R. 646; *Talbott v. King*, 9 Pac. 434.

Many loose assertions are found in these cases—that the patent relates back to the first initial step, to discovery, to location, etc.—but such expressions are always to be considered in connection with the effect of application for patent and the assertion or failure to assert an adverse claim; if in all cases a patent related back to discovery, a claim of 1861 patented yesterday would supplant a patent which

issued twenty years ago. The doctrine of relation is never allowed to prevail to work manifest injustice and cut out rights which have intervened while he who might have been first has slept upon his rights. In theory it may be said to relate back to discovery, but with the qualification made necessary by its failure (if such has been the case) to adverse intervening applications for patent.

The doctrine of relation has its practical importance in cases where proceedings to obtain patent are being urged by parties hostile in interest, and it becomes necessary to decide which party is compelled to file his adverse claim; or in cases where patents have issued to both of the parties so situated, each claiming to have been the first in point of priority in his proceedings to obtain patent. *It would seem* that, in all such cases, the party from whose survey previous surveys have been regularly excluded, is the party under the necessity of filing the adverse claim.

But where the party holding the approved survey has failed to follow it by an application in the local Land Office, upon certificate of such failure given by the local Land Office, the Surveyor-General will discard the previous survey and allow application to be made by the party holding the later survey, excluding the lode which has lost its priority by such failure.

The Land Department issues the first patent to the first applicant, without regard to the priority of his possessory title, and in case the senior possessory title fail to assert its seniority by filing and prosecuting its adverse claim, the seniority of such possessory title is lost, and yields to the title which the Government issues to the applicant for patent. It follows that the doctrine of relation can only benefit the senior patent, and that the junior patent can

not claim that its title to the ground already given to the senior patent, relates back to a time prior to the date when the title of the senior patentee accrued.

Conflict between Patents.—In support of these views it may be added that it is very doubtful whether, in fact, there are any two patents (under the Act of 1872) which do, in fact, cover the same vein at the same point. From each later survey have been excepted all previous surveys; the entry follows the survey, and the excepted ground is not paid for. The grant of the supposed vein to the patentee, independent of surface ground, is a matter of doubt, even upon the face of the patent, when all parts of the instrument are construed together, not only the surface ground but the claim of the prior party upon his vein being excepted; and whether so excepted or not, it did not remain *after entry* the property of the Government, to be granted to a second or other patentee.

Notwithstanding this apparent exception of previous entries, the system of granting overlapping patents is indefensible. A glance at the plat of any late patent in a well-developed district, will introduce the subject to the reader; three or four surveys, partly crossing, partly parallel and intersecting at all angles are frequently seen, so that unless the plat be colored, the eye can scarcely distinguish one from another; only the rigid application of the rule of preference to prior patents can ever relieve this matter from difficulty; for while the words of a patent always except the *surface* and *claim* of previous surveys, they still proceed upon the fallible supposition that each survey indicates a separate vein.

In cases of patents granted under the old Act, where no survey was approved until after application had been

otherwise perfected, the subject requires an examination of the repealed sections of the Act of 1886 as well as of the general principles above stated.

In the case of contest between the holders of the patent to a mineral lot and the holder of a patent to the same ground as agricultural or school land; that is to say where the parties claim under entirely different laws, and there has been no requirement of an adverse claim and consequently no proceeding *in rem*, the mining patent would probably be held, at least *prima facie*, to relate back to the original discovery.—*Heydenfelt v. Daney Co.*, 13. M. R. 204.

Void Conditions in Patent.—The Land Office can not insert conditions or exceptions not authorized by law in a patent.—*Deffeback v. Hawke*, 115 U. S. 392; *Clary v. Hazlett*, 7 Pac. 701; *Talbott v. King*, 9 Pac. 434; *Silver Bow Co. v. Clarke*, 5 Pac. 570.

Conclusiveness of Patent.—A patent is conclusive in all suits at law (1) when valid on its face and (2) when not issued in opposition to law. In any such case it is a final disposition of the legal title and must be recognized by courts and allowed such effect.—*Boggs v. Merced Co.*, 10 M. R. 331.

Patent; when Void.—If not valid on its face or if issued in spite of a law which forbade its issuance, it is an inoperative paper, and may be passed upon and excluded in a suit at law—because it is *void*.—*Kahn v. Old Telegraph Co.*, 11 M. R. 616; *St. Louis Co. v. Kemp*, *Id.* 673.

Patent; when Voidable.—But if only irregular, or obtained by fraud, or issued to the wrong party, it is only *voidable*, and must, until set aside, or a trust declared thereon, be taken as conclusive both at law and in equity.—*Silver Bow Co. v. Clarke*, 5 Pac. 570; *Rose v. Richmond Co.*, 17 Nev. 26.

When Obtained by Fraud Against the United States, as where mineral land has been entered as agricultural or upon false representations, the false representations being material and the rights of innocent purchasers in certain cases protected (*G. S.* § 2262), it may be set aside at the suit of the United States. This requires action by the Attorney-General, who directs the U. S. District Attorney to bring suit in the U. S. Circuit Court.—*Boggs v. Merced Co.*, 10 *M. R.* 331.

Where Issued to the Wrong Party in fraud of the right of the real owner, the suit is not to set the patent aside, but to have it declared that the party to whom it issued holds in trust, and to compel by order of court a conveyance from him to the party to whom it should have issued.

Such a suit can not be maintained on mere priority of title, for here an adverse claim should have been filed, but only on the allegation of breach of trust or in like instances.

Irrevocable; No Second Patent.—After a patent has issued, the Land Office has no power to cancel or recall the same nor to issue a second patent for the same land to another party.—*Moore v. Robbins*, 96 *U. S.* 530.

Canceling Receiver's Receipt.—But the Land Office has the power to cancel the Receiver's receipt and all preliminary proceedings, and frequently exercises this power in case of irregularities in the application.

INTERFERENCE OF CLAIMS.

Veins Uniting on Strike or Dip.—R. S., § 2336.—Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.—§ 14, *May* 10, 1872.

Obsolete Territorial Statutes.—In addition to the above Congressional Act there were certain Territorial Acts passed in 1861 still retained in the last reprint of the State laws (G. S. § 2391, 2392), but they have become practically inoperative since the Act of 1872 requiring boundaries to be staked.

There was also an Act (1861, p. 167) in force from 1861 to 1868 requiring shafts not more than fifty feet apart to be sunk in order to prove up a claim.

Mining Acts based on Erroneous Presumption as to Facts. Irregularity of Veins.—The cause of the principal question under this heading is the fact that the U. S. Mining Acts concerning lode claims are based on the supposition or theory that a lode is a straight vein whose course can be readily ascertained and indicated by a straight line or a series of straight lines; and that occasionally such a vein is crossed by another in a similar straight line, merely requiring the right of way to give each lode its proper claim. But in fact, a lode is rarely a straight line; it is seldom to be traced without confusion, for more than a few feet; and in its course other veins are absorbed into it; and off-shoots

(not only spurs, but, perhaps better developed veins than itself) run from it in all tortuous directions; and in its extension downward, it invariably dips laterally; and often shows a fork of which both parts approach the surface; and it will divide, and may or may not, unite at another point; and it will abut suddenly upon country rock and so be thrown far to one side; and instead of showing distinct lines, mineral veins are as irregular, as disproportioned in length and width, as much intermingled, as uncertain to segregate from each other, as are the veins of the hand, or the veins in a block of marble.

The theory that each survey covers a distinct vein, or that a survey covers any vein at all, or that its center line follows the apex of a vein, or that its discovery shaft is sunk on a vein, is all bare assumption—these points depend upon underground developments, and not on diagrams or surface surveys.

Presumption that the Survey Covers the Vein.

—But upon proof of discovery and location it is inferred that the survey lines include the apex of the vein, and this presumption throws the burden of proof on the party alleging a departure.—*Armstrong v. Lower*, 6 Colo. 585.

SIDE VEINS WITHIN LOCATION LINES BEFORE MAY 10, 1872.

Territorial Act.—§ 4.—On all mineral lodes or veins of gold-bearing ores, or of silver or other valuable minerals in this Territory, the owner or owners of all such deposits shall, by virtue of priority of discovery, be deemed and held to be the owner or owners of all spurs, off-shoots, dips, angles, feeders, cross or

parallel veins of any character or name whatsoever, lying and being within the limits of twenty-five (25) feet in either direction from the center of said first discovered lode or vein.—*Feb.* 9, 1866.

Congressional Bounty or Confirmation.—R. S., § 2328.—Applications for patents for mining-claims under former laws now pending may be prosecuted to a final decision in the General Land Office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this Chapter; and all patents for mining-claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this Chapter where no adverse rights existed on the tenth day of May, eighteen hundred and seventy-two.—§ 9, *A. C.* May 10, 1872.

Limited to Single Vein.—Under the original Congressional Act of 1866, no vein except the first claimed was covered by the location or conveyed by the patent.

The section of the Territorial Act of 1866, above printed, attempted to donate to the locator all veins within twenty-five feet of the center of the first discovered lode; but that section is generally deemed to have been in excess of the power of the Territorial Legislature, in allowing to the claimant, portions of the public domain which he had neither discovered nor appropriated.

A lode claim therefore, located before May 10, 1872, originally covered but one vein, and a patent issued before that date covered but one vein.—*Blake v. Butte Co.*, 9 *M. R.* 503. *Eclipse Co. v. Spring*, 59 *Cal.* 304.

Side Veins Donated to Old Claims since 1872.—But by the Act of 1872, which gave to all new locations and future patents the benefit of everything between their side lines, it was added that all old locations and all patents under the old Act should have the same benefit, always saving any rights which had intervened before the passage of the Act of 1872.—*R. S.* § 2328.

The result of this Act is, that a location properly made before May 10, 1872, or a patent issued before that date,

covers all side and other interfering veins practically to the same extent, and as fully as locations and patents under the present law; always saving the exception in the section last above cited.—*Pardee v. Murray*, 4 Mont. 234.

SIDE VEINS WITHIN LOCATION LINES SINCE MAY 10, 1872.

Congressional Act.—§ 2322.—The locators of all mining locations heretofore made or which shall hereafter be made, * * * where no adverse claim exists * * * shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically—* * * —§ 3. *A. C. May* 10, 1872.

Present State Act Conforming to Above Section.—G. S., § 2465.—The location or location certificate of any lode claim shall be construed to include all surface ground within the surface lines thereof, and all lodes and ledges throughout their entire depth, the top or apex of which lie inside of such lines extended downward, vertically, with such parts of all lodes or ledges as continue by dip beyond the side lines of the claim, but shall not include any portion of such lodes or ledges beyond the end lines of the claim or the end lines continued, whether by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode.—§ 9. *Feb.* 13, 1871.

Under the law, as it has existed since May 10, 1872 (the Territorial Act of 1871 being merely conformatory to the Act of Congress), it is clear that all veins whose tops or apices are within the lines of the claim go with the lode which gives the name to the claim; and the surface lines rather than identity of the veins, are made to control the extent of the claim, and to fix the boundaries between adverse parties.

The only possible exceptions to this general assertion are:

1. In regard to what are commonly called cross-
lodes; p. 86.

2. Where the outcrops of two apparent veins appear on two separate lines at the surface, but in their downward course such veins dip into each other, unite and form a single vein; p. 90.

3. Locations and patents before May 10, 1872, where adverse rights had intervened so as to prevent them from taking the benefit of the grant of side veins under the Act of that date; p. 83.

CROSS LODES.

Priority of Title Controls.—R. S., § 2336.—Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine.
* * * —§ 14. *A. C. May* 10, 1872.

The above section being a single section of an entire Act, must, if ambiguous, be compared with all other sections of the same Act which have any bearing on the subject matter. The only other pertinent portion of the Act is that part of section 2322 (Sec. 3. *A. C. May* 10, 1872), which says:

“The locators of all mining locations * * * where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, * * * shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically”— * * * * *

In the case of lodes located under or before the Act of 1866, a right of way is clearly granted under the two sections above quoted. Those old claims held but a single vein, and the owners of any other vein had a right to work up to the very wall of the crossed vein. Such being the case, the Act of May 10, 1872, merely added the easement of the right to work through the crossed vein; but as to lodes located under the Act of May 10, 1872, the matter is complicated by the fact that all claims under that Act in Colorado have a width ranging from 50 feet to 300 feet, and that all veins within such distance have been granted to the owner of the claim as fully as the vein upon which his discovery shaft is sunk.

Title to the Space of Intersection.—The question has been often stated in this form: “Does the *space of intersection*, mentioned in Sec. 2336, mean the space at the actual crossing of the veins—or the space through which the cross lode runs from side line to side line?” But this question does not reach the merits and is based upon a misunderstanding or a want of due attention to the words of the Act.

If the cross lode have the right of crossing at the point of actual vein *crossing* only, how is it to be worked across the ground between the side line and the space of actual vein intersection? Of what avail would such right of crossing be to those owning no easement or estate in such intervening ground? It is clear then that to make the Act have a just and sensible meaning, the “space of intersection” refers to the whole distance from side line to side line, and this being decided, the real question remains: “To whom does the cross vein *belong*, throughout the space of intersection from side line to side line?”

Sec. 2322 had already granted it to the prior owner of the crossed lode. It was within the power of Congress to

have, by a subsequent clause, made the crossing lode an exception carved out of the general grant of the words of the previous section; but has it attempted so to do? The only grant of Sec. 2336 is, the *right of way*, which of itself implies that it is *not* a grant of the vein, but of an *easement* to which the estate of the prior location is made servient.

To give any part of the space of intersection to the holder of the later location would be to take from the older location something already granted to it. To create an exception out of his grant as he originally takes it under Act of Congress would require in the wording of the Act expressions as strong as are required to create an exception in a deed. An exception is equivalent to the reconveyance of land already conveyed. A right of way is not an exception, but a reservation which may be inferred from any wording indicating an intention to create an easement. It takes nothing from the body of the grant of the first locator; but compels the first locator to use or hold his grant or claim subject to a right or privilege of the junior or overlapping claimant, of reaching the other end of his claim by passage through the senior location.

It seems to the author, from the above reasoning, that a cross lode, takes no estate in the claim it crosses and has no rights as against the crossed claim except the mere right to drift through, leaving all ore as the property of the crossed claim.

Decisions as to Rights of Cross Lodes.--In agreement with these views is the case of *Pardee v. Murray*, 4 Mont. 279, deciding that the prior location is entitled to all veins apexing within its lines, and that the later location of a cross vein has only the right of way across the senior claim; and that if the cross locator takes the ore, he is a trespasser. But in disagreement with them is the case

of *Branagan v. Dulaney*, 8 Colo. 408, which holds that a cross vein is excepted out of the claim of the first locator (in this case also the holder of a patent before the cross lode was located) and that the cross lode has not only the right of way but takes all the ore in its vein within the lines of the claim crossed except at the actual point of vein intersection. This case was argued on behalf of the cross lode, but settled between the parties about the same time, so that no argument was filed on the opposing side. On the *ex parte* argument it was decided without reference to the Montana case and upon a purely technical rule of statutory construction, to-wit: The rule that in cases of ambiguity not otherwise soluble the latter section of an Act (§ 14) will control the operation of a prior section (§ 3) and upon the supposition that section 14 was a grant of the crossing vein. To the same effect was the ruling in *Hall v. Equator Co., Mining Rights*, 3d Ed., 282.

Angle of Crossing.—In speaking of the distance from the side lines to a supposed crossing of veins, the supposition is of a vein crossing at right angles which would be the case where the strongest equity could be raised in favor of the owner of the cross vein; but in fact a cross lode of such character is of rare occurrence. In general the crossing would be at much less angle, and the less the angle the greater the intrusion of the cross vein. A case can be supposed of a cross vein of greater length than from end line to end line, and in such case the cross vein would claim more than the originally located lode.—*Gleeson v. Martin White Co.*, 9 M. R. 441.

No Right to Enter to Prove Crossing.—The actual crossing of lodes is more often a matter of conjecture than proof, and upon the conjecture of a crossing a party has no right to enter upon the crossed claim to prospect for

his lode or prove the crossing. The latter clause of Section 2322 contains a proviso against the use of the surface in any such case, and admitting the right of crossing to the fullest extent, it can be exercised only by following the vein from some point outside of the crossed claim to a point where it enters the crossed claim, and thence by drift along the same.—*Atkins v. Hendree*, 2 *M. R.* 328.

VEINS UNITING ON THE DIP.

Prior Location or Title.—R. S., § 2336. * * * Where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of inter section.—§ 14, *A. C. May* 10, 1872.

The above paragraph follows that part of section 2336, which says that "priority of title shall govern" in case of interference of veins on their strike. The ambiguity of the paragraph is in the word "location."

This word has its technical and its popular meaning. Its technical application is "those successive acts by which public land is appropriated." Its popular meaning makes it synonymous with the word "claim." Taken in connection with the preceding paragraph we believe it to be used with the latter signification. Giving it such meaning, in all cases of interference on the dip the elder and better title will take the united vein.

Allowing its technical meaning to control, it might happen that a lode so uniting might have a senior *discovery* and *patent*, and yet have a junior *location*.

The popular meaning makes the paragraph consistent with other sections of the Act, and was adopted as the true construction in the case of *Hall v. Equator Co.*

If the point arise between two possessory titles, the lode having the prior title (the oldest *discovery* properly followed up) would take the vein below the point of union. If both veins were patented, that patent which is senior by relation (p. 76) would control. If one claim were patented and the other possessory, the patented vein would be the older and better title, excepting of course, the case where the possessory title held a prior approved survey, and its patent had been withheld from issue by reason of the pendency of adverse suits, or otherwise.

We are fully aware that it might often be difficult or impossible to support an adverse claim in a case of interference on the dip, the fact of the union of veins not being suspected or ascertained in due time; but a similar hardship exists in all cases where any proof of identity of veins is required, and it could hardly have been the intent of the Government to pass to that party who is most diligent to perfect his title by patent, a grant which is liable, although senior in time, to become junior in fact, as the result of unknown future developments.

DEPARTURE OF VEINS FROM SIDE LINES.

Statement of the Point.—That the vein, and not the surface, is the material grant of a patent to a mining claim has not been disputed; nor can it be denied that it is

the intention both of the purchaser in buying and the Government in selling to deal with the mineral deposit, the surface being worthless, in itself, to either. And if the case lay between the Government and the purchaser alone, this manifest intention might prevent any attempt to confine the party to an erroneous survey, giving him only valueless surface; notwithstanding the material fact that it is the patentee, and not the United States, who has chosen the lines which produce the mischief.— *Patterson v. Hitchcock*, 5 M. R. 512.

But it is the rights of innocent third parties, holding claims beyond the located or patented side lines, which has rendered this question so important, and which must result in maintaining the consistent construction already given to the Act of Congress, confining every claim to its own lines; though even if it were a matter of indifference, this holding requires no forced construction of the Acts under ordinary rules of interpretation, and had been the uniform ruling of the Judges on the circuit before its confirmation by the Supreme Court.

Uniformity of Rulings on the Point.—This question, however, with singular unanimity has been set at rest by the decisions of many courts. It is now beyond controversy that the moment the apex of a vein leaves either side line of its survey the locator has no further claim thereto, beyond such point of departure.— *Wolfley v. Lebanon Co.*, 13 M. R., —; *Johnson v. Buell*, 9 M. R. 502; *The Flagstaff case* (by the Supreme Court of the United States) 9 M. R. 607; *The Golden Fleece case*, (Nevada) 1 M. R. 120.

These decisions apply equally to patented and unpatented claims, and have been universally acceded to as the only construction which would give to a mining claim the

same certainty of title which belongs to other classes of real estate which are free from the complications of dips and departures.

Facts of the Golden Fleece Case.—The case from Nevada is singularly illustrative of the injustice which would result from a contrary holding.

The Golden Fleece lode was surveyed and staked in 1874, upon a vein supposed to run N.-W. and S.-E. The location claiming 1500 feet ran due N.-W. and S.-E., with 600 feet width. Afterwards developments by its workings and on the Leonard lode, whose discovery was about 800 feet to the southwest, showed that the vein really ran at right angles to its originally supposed course. The Leonard lode having applied for patent, the Golden Fleece made a second survey, at right angles to the first, which of course embraced all the workings and croppings on the Leonard, and then filed its adverse claim, based on such relocation. But it was held that the Golden Fleece must be confined to its original location and to that part of the vein within the lines of such original location.

Same Holding on Old 50-Foot Patents.—The patent in the *Wolfley case* was issued under the Act of 1866, so that the decision necessarily applies to all patents; because the argument in favor of following the vein, under the Act of 1866, was much stronger than in the case of patents under the later Act.

Not Color of Title.—In a later case under the same patent it was held that where the patent owner had followed his vein outside and had held it adversely for five years, that he had not even such "color of title" as would operate to allow him the benefit of the Statute of limitations.—*Lebanon Co. v. Rogers*, 3 Colo. 31.

VEIN WIDER THAN PATENT.

In the controversy between the Equator Lode and the Colorado Central Lode in the U. S. Court at Denver, the lode was admitted by both parties to be at the point of conflict over 100 feet wide. Each claimed under a patent conveying a surface of 50 feet, the Equator covering the southern portion of the apex and the Colorado Central, the northern. The Court held that in such a case each party could hold only to its side line, and divided the lode by extending the south side line of the Colorado Central patent vertically downward through the lode.

In the case of *Bullion Co. v. Eureka Co.*, 11 Pac. 515, the Supreme Court of Utah were divided, two Judges holding that covering a part of the apex gave a right to the dip, and the dissenting Judge following *Hall v. Equator Co.*

LOCATION FAILING TO COVER VEIN.

If the location fail to cover the vein, not only is the vein lost after it leaves the side lines, but that portion of the location which extends beyond the point where it loses the vein, has been decided to be defeasible, if not void, having no discovery-vein upon which to base any further claim, to either surface or other veins which may lie within its lines.—*Patterson v. Hitchcock*, 5 M. R. 542.

This decision does not apply to patented claims; and the presumption of fact in all cases is that a location covers the vein until the contrary is affirmatively proved.—*Armstrong v. Lower*, 6 Colo. 343.

The reason that a patented claim is valid to its full extent for what it does cover is that the patent is of a "piece of land," with all the surface its lines include; the patent is supposed to have been based on a location made on a vein, with only the statutory width on either side, and if in fact it was otherwise, or if the vein departed before it reached the end line, it is too late after patent for any adverse claimant to set up any such variations to defeat the operation of its grant to the entire surface or to such part of the vein as it does cover.—*Gleeson v. Martin White Co.*, 9 M. R. 429.

LODES, VEINS AND LEDGES.

Definition of the Terms.—The word "lode" and the word "vein" are used indiscriminately in the Acts of Congress as well as in the popular language, to signify the same thing. In Bainbridge on mines, the text, page 2, defines them in the same sentence: "A mineral lode or vein is a flattened mass of metallic or earthy matter, differing materially from the rocks or strata in which it occurs." A note to the same suggests the use of the word "vein" as incorrect, when applied to such deposits as those of anthracite coal. Still the word "vein" is universally used to include coal, and other flat and non-metallic deposits, while the word "lode" is not so used. This is the only distinction in the use of the words. The word "lode" is of Cornish origin, (2 Ner. 176); the word "vein" is of Latin derivation. In the *Eureka* case (9 M. R. 578) where, it is said, every known definition was presented to the Court,

the opinion does not intimate any difference in their meaning, but says: "Those Acts give no definition of the term 'lode'. They use it always in connection with the word 'vein.' "

The word "ledge" came into use in California after the discovery of quartz mines, because they were generally found in the hills above the gulches, and were often identified with protruding outcrop.

Connection with Context of the Statutes.—The only limitation or qualification in the U. S. Mining Statutes in connection with the words "veins or lodes," or "veins, lodes and ledges," is the expression "of quartz or other rock in place."

"In Place."—These words have been construed material in cases where the vein has been found eroded or broken up—material, however, only in cases where it has been attempted to follow the claim on the dip. In *Stevens v. Williams*, 1 M. R. 557, where both the overlying and underlying bodies were solid, the deposit was held to be a lode "in place."

In *Tabor v. Dexter*, 9 M. R. 611, where the location was on ore where the overlying rock had been eroded, the ore body remaining covered only with wash or gravel, it was held that the lode was not in place. A like ruling was made in *Leadville Co. v. Fitzgerald*, 4 M. R. 380. The practical point in these decisions is that where a location is claimed to be upon the apex of a lode, it must be upon such apex at a point where it is in place between the original enclosing rocks to be valid as such an apex location as will give a right to the dip; but that such a location is valid to the side lines has not been doubted.

Richness of Deposit not Material.—In *North Noonday Co. v. Orient Co.*, 9 M. R. 537, Sawyer, J., says: "A

vein or lode authorized to be located is a seam or fissure in the earth's crust filled with quartz, or with some other kind of rock in place, carrying gold, silver or other valuable mineral deposits named in the Statute. It may be very thin, and it may be many feet thick, or thin in places—almost or quite pinched out, in miners' phrase—and in other places widening out into extensive bodies of ore. So, also, in places, it may be quite or nearly barren, and at other places immensely rich. It is only necessary to discover a genuine mineral vein or lode, whether small or large, rich or poor, at the point of discovery within the lines of the claim located, to entitle the miner to make a valid location including the vein or lode." Its validity as a thing that may be located does not depend on what it runs.

There Must be More than a Trace of Mineral—an ascertainable quantity—but an assay of one or more ounces will suffice.—*Sterens v. Gill*, 1 M. R. 579.

Whatever a Miner Would Follow with the expectation of finding ore, or similar phrases, have been adopted as a practical test of what is to be considered a lode under the Act of Congress.—*Eureka Co. v. Richmond Co.*, 9 M. R. 578; *Harrington v. Chambers*, 1 Pac. 362.

Mineral Bearing Zone.—A broad formation impregnated everywhere with mineral, but traversed by true fissures within itself cannot be considered as the lode; the fissures within such zone are the lodes and the zone is country.—*Mt. Diablo Co. v. Callison*, 9 M. R. 616. Ore distributed generally, though unequally, throughout the entire mass of the limestone of the mountain does not constitute a continuous lode such as may be followed beyond the lines of its location.—*Hyman v. Wheeler*, 29 Fed. 354.

Where the Continuity of the Ore Body is Broken by the Contact becoming barren for a consid-

erable distance, the legal extent of the vein ceases.—*Stevens v. Williams*, 1 M. R. 557; *Stevens v. Murphy*, 4 M. R. 380. A vein need not be a straight line nor uniform in dip, thickness or richness of ore. The enclosing cleft or fissure may narrow or even close for a few feet and be found further on. Its continuity may be proved by following either the ore or the rock which carries the ore. Slight proof of ore is sufficient where the enclosing boundaries are distinct; there need be no proof of such boundaries if the ore itself can be followed. But if the vein disappear so far or so completely that it cannot be recognized when it is again found or alleged to be found, there is no sufficient proof of continuity.—*Iron Silver M. Co. v. Cheesman*, 116 U. S. 530. Followed substantially in *Hyman v. Wheeler*, *supra*.

All Deposits "in Place" are Lodes.—The uniform ruling has been that all forms of mineral or mineral gangue in place, whether fissure or contact veins, or impregnations, or other irregular deposits should be construed to come within the expression "veins or lodes" used in the Act of Congress, and as such to be subject to location and patent under the act. There has been in fact a concession that such should be the holding rather than a contention to the contrary. The substantial and contested point has been whether a location or patent on certain forms of deposit was entitled by virtue of including the apex or so-called apex of the vein or deposit, to follow the vein or deposit beyond the side lines underneath the adjoining ground or claims of other parties. This point will be considered under the next following headings, **APEX** and **DIP**.

APEX.

Section 2322 is the only paragraph of the Congressional Act which refers to the apex of a lode in connection with its dip. It gives to the claimant all lodes, the top or apex of which lies inside of his surface lines in these words:

"The locators of all mining locations * * * * * shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such surface locations."

The common law grant of lands conveys the surface and whatever minerals underlie the surface within lines drawn perpendicularly downward towards the center of the earth.

The above section implies a departure from this rule; a lode location under its terms or a patent issued upon such location, being in the case of a location a conditional, in the case of a patent, an absolute grant (1) of the surface (2) of the veins whose tops or apices lie within its side lines, wherever the dip may carry them: and on the other hand other veins whose tops or apices are outside of the lines, but which dip underneath the location or patent, are excepted in favor of the proprietor of such underlying veins.

That such grant is valid and capable of being enforced no one has doubted, but in ascertaining what lodes are included and what excluded in such case in connection with the varying character of deposits, the tendency of veins at times to lose their continuity and the fact that a location seldom covers the apex of a vein from end line to end line has caused serious litigation, and while some points have been passed upon, others remain in doubt; and such de-

cisions as have been made have not always been acquiesced in as a final and correct disposition of the points involved.

Relation of the Apex to the Side Lines.—All right to follow the vein on the dip beyond the side lines depends upon three facts: 1. That the vein have an apex. 2. That such apex be enclosed within the lines of the claim. 3. That such apex is substantially parallel to the side lines.

Conversely it follows that if the vein be of such a class that it cannot properly be said to have an apex, or if the discovery be made on the dip and so far to one side that the side lines fail to enclose the apex, or if the side lines be laid transversely to the strike of the lode, that the side lines as well as the end lines become vertical bounding planes.

Because veins and lodes are granted by the act of Congress together with the right to follow such as have their top or apex within and along certain lines it does not follow contrary to the geological fact that every vein must have an apex or that the edge or any part of the vein is made by fiction of law, its apex in law, so as to favor a construction acknowledged to be a departure from common law precedents.

To What Deposits the Apex Rights Extend.—In the case of a true fissure vein covered by its location from end line to end line including the entire apex within its side lines, the right of its owner to follow the dip underneath adjoining claims has never been seriously disputed. The only limitation to his right would be that a location on the dip made prior to his own would doubtless cut off his further right to follow the dip.—*Iron Silver Co. v. Murphy*, 1 M. R., 555.

Outcrop or Edge of Vein Not Necessarily the Apex.—The typical or true fissure vein is a narrow zone of ore-bearing rock descending indefinitely in depth. It

is essentially a perpendicular formation, though always, or nearly always, inclining some degrees from true; this inclination is called its dip. The bounding planes of such vein are called its walls. The outcrop or nearest approach of such a vein to the surface is, and always has been, properly styled its apex. Such were the veins generally known and worked on the Pacific slope at the time of the passage of the Mining Acts.

To give to such veins the right to their dip was essential to their full use and enjoyment.

All other classes of veins are essentially horizontal in their formation. If found to approach the perpendicular such fact is accidental, not incidental—occasional and rare, not usual or normal. They may be, like coal, a layer of rock itself constituting a separate geological stratum; or they may be a filling between the planes of contact of two dissimilar formations; or they may be impregnations diffused irregularly through a broad zone. Such deposits are called beds or even fields, terms obviously inapplicable to perpendicular deposits. Their upper boundary rock is commonly and properly called the roof—rarely the wall; and while they may have an outcrop, such outcrop was never known among miners as an “apex” until the use of such term in the Mining Acts induced the attempt to abuse the term by imposing it upon the outcrop of horizontal formations.

The term itself means the top or highest point, and has no signification when applied to horizontal deposits.

If the mining acts of which we are speaking applied to coal veins it is obvious that the grant of a square mile of coal when such grant happened to be laid on the particular section where the higher edge of the coal bed happened to lie, and such edge of the bed was construed to be its apex, would give the right to work the bed

through as many miles as the same field could be found to underlie; if basin-shaped as some formations are there would be two so-called apexes, or a circular apex.

In the case of *Duggan v. Davey*, 26 N. W., 901, 2 Dak., where an eight-degree vein having its outcrop on the side of a hill was claimed throughout the entire extent by those who had their location upon the outcrop, the court ruled that such lode had no apex and that a location on the dip, although made after a location on the outcrop, was valid, and that the outcrop claim could not follow beyond its side lines.

In the Leadville cases arising upon veins of the character last above described in the U. S. Circuit Court at Denver any such distinction as above made has not been recognized. But the strict ruling on other points, that there should have been no prior location on the dip; that the apex location must be made on a vein in place, with solid matter both above and below the vein, and the necessity of having the apex parallel to the side, and not parallel to the end lines, which is a practical impossibility when the real deposit is a field, bed or basin, with a more or less circular rim or outcrop, have circumscribed and practically defeated most attempts to follow such veins on their dip.

DIP.

Dip is a proper mining term, and has a plain and important signification. It is used along with "angles and variations" in the A. C., 1866, and is with those words omitted in the A. C., 1872, but its place is supplied by the phrase (§ 2322):

"All veins * * * throughout their entire depth * * * although such veins * * * may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations."

It has little importance except (1) in connection with the apex and (2) in connection incidentally with drainage.

Whether the above grant of the right to follow the dip extends to all classes of vein deposits has been considered under the preceding heading.

Cubic Incidents of Lode Claims.—From the outstart it should be kept in view that a lode claim is a solid body of ground and not a "superficies." Dip is only one of the incidents of this fact. A placer or even a coal bed furnishes few analogies to define the rights of a claim which leaves the surface at once and follows its own course, governed only by its natural but invisible boundaries.

Dipping under Adjoining Claims.—Since the dip may carry a lode under the side-lines of an adjoining claim, the right to follow such a lode must indicate either, 1st—An easement to which the adjoining claim is subject, or rather, 2nd—An exception out of the estate of the adjoining claim. The maxim that ownership extends from the surface to the center of the earth in vertical lines, in either event, therefore, does not apply; the claim in its downward course is governed by the dip of the veins whose apices appear at the surface; it extends under the vertical side lines of the adjoining claims on one side, and on the other side it leaves veins pitching under its own side-lines as the property of him who is their owner at the surface.—*Iron Silver Co. v. Cheesman*, 116 U. S., 530.

It has been decided that the right of outside veins to follow on the dip underneath a patent extends only to locations made prior to the date of the entry of such patent.—*Pacific Coast Co. v. Spargo*, 16 Fed., 348; 8 Saw., 645. But this decision is one of first impression and not authoritative.

The Side or Auxiliary Veins, whose apices may be within the side-lines of the claim or patent have the same right to the dip as has the principal or discovery vein.—*Jupiter Co. v. Bodie Co.*, 4 M. R., 412.

No Apex—No Dip.—But any located or patented claim which has been so unfortunately surveyed that its vein runs practically at right angles to the side lines, cannot claim the dip beyond its side-lines.—*The Flagstaff case*, 9 M. R., 607; *McCormick v. Varnes, Id.*, 506; *Argentine Co. v. Terrible Co.* 122 U. S. 478. Or if the side line run parallel with and along the vein so as not to cover the entire width of the vein the same result, it would seem, ought to follow.—*See page 94.*

The end lines of all lode claims are required to be parallel; and where the lode in its descent reaches the end lines protracted, the claim ceases and the dip cannot be followed across the protraction of the end lines.—*Richmond Co. v. Eureka Co.*, 9 M. R., 631.

As to veins uniting on the dip, see page 90.

The Dip in Coal Mines or other essentially flat deposits held under common law grants, has been considered important only upon the question of drainage, but under the United States Mining Acts it practically determines the underground limits of the claim in the case of true fissure veins; and in the case of deposits it is under pretext of the dip that the locations on the outcrop have attempted to maintain their claim to the whole bed, extended laterally to an indefinite extent.—*See DRAINAGE page 108.*

WALLS.

Defined.—In a contact vein the roof or hanging wall is the plane of the contact above ; the floor or foot wall is the plane of the contact below. In fissure veins the walls are the plane of demarcation between the country and the gangue.

Relation to the Country.—It should seem almost self evident that the nature of the wall must depend upon the nature of the country rock and the nature of the material which it encloses. Between certain rocks the plane of separation would be distinct and traceable; with other rocks a diffusion of the oxides and minerals of the enclosed material through the adjoining country, would obliterate more or less all trace of the original plane of division. Where this plane of division is manifest to the eye there is what miners call a wall—where it has become obliterated they say there is no wall. It is, therefore, manifest that the absence of one or both walls is no proof of the non-existence of a vein, they being a mere accidental circumstance. And it has been so decided in the *Lime Lode Case* (116 U. S. 539) and in the *Durant Case* (29 Fed. 354). In the former decision, after defining what constitutes a lode as “a body of mineral or mineral-bearing rock within defined boundaries” Miller, J. aids: “In the existence of such body and to the extent of it, boundaries are implied;” and in the latter case this language is used by Hallett, J., “It is true that a lode must have boundaries, but there seems to be no reason for saying that they must be such as can be seen.”

Broken Ground.—Natural Cleavage.—It is also evident that subsequent disturbance of the vein matter would tend to destroy the continuity of the wall; and in many classes of rock the natural cleavage is such as often

to be mistaken for and followed as a wall. In such ground a very little manipulation may be made to show an apparent wall where none, in fact, exists.

Disappearance of Wall.—It is nevertheless true that where a wall has shown itself for some distance and disappears—this is an important item to be considered where the further continuity of the vein is made doubtful by reason of the simultaneous disappearance of the mineral or an apparent change in the rock which is being followed. *See page 34.*

Wall or Side of Working.—It is also to be observed that the term "wall" is often used with reference to the actual *side* of a drift, shaft or other working without reference to its association with the vein: and finding mineral by "cutting through the wall" is spoken of as if it implied no contradiction of terms.

SPURS.

The word spurs is not found in any of the Acts of Congress nor in the patents issued under them. It is a dangerous term, because it has no definite meaning. That which when first discovered may be called a spur, may prove to be a better developed vein than the lode from which it strikes off.

But the term found its way into the Territorial Act of 1866, and is seen in most records; when properly applied it signifies a feeder to, or off-shoot from, a lode. As such it is part and parcel of the lode, at least as far as the side lines of the claim, and if it extended much further, it could hardly be called a spur.

A spur is defined (Bainbridge p. 2, note) as "A lateral branch from the main lead, not returning to it but losing itself in the surrounding soil."

A discovery shaft upon a spur ought not to hold against a discovery upon a lode, because a spur properly so called, is not supposed to show the statutory "well-defined crevice."

Ore bodies formed off from the fissure do not form separate veins.—*Tombstone M. Co. v. Way Up Co.*, 1 Ariz. 426.

ANGLES AND VARIATIONS.

Use in Statutes and Conveyancing.—In Section 4, A. C., 1866, the words "angles and variations" were used and under that Act a lode was patented with its "angles and variations." They are neither law terms nor technical mining expressions, but are supposed to cover the digressions of a lode from a straight line, and might be extended to "faults." In arguing the important question arising upon patents under the old law when the vein left the side lines, these words were strongly urged as indicating the intention to pass the vein as the essential grant of the patent. Their use in records and conveyances has become a mere form.

Irregular Surveys with Unnecessary Angles.—A lode may and should be surveyed to cover all its angles. But acute angles made such as were attempted in the Stone Lode leading to fantastic figures widely different from the parallelogram intended in the act of Congress, even if their end lines are parallel, run great risk of being ruled out of any right to claim beyond their side lines. In other respects they may be wholly valid if the end lines are reg-

ular and the statutory width and length are not exceeded. *Elgin Co. v. Iron Silver Co.*, 4 *McCrary*, 281; 118 *U. S.* 200.

Whether the presumption allowed in ordinary cases, (*Armstrong v. Lower*, 6 *Colo.*, 393,) that the survey covers the vein would be indulged to a claim which has acute angles may be doubted.

DRAINAGE.

Legislative Control.—Sec. 3. The General Assembly may make such regulations, from time to time, as may be necessary for the proper equitable drainage of mines.—*Const. Art. XVI.*

Under the above authorization Sections 2416-2424, of the General Statutes, compiled from Acts of 1870 (p. 81) and 1872 (p. 151) attempt to regulate this subject. Such State control is also recognized in Sec. 2338 of the United States Statutes.

But the subject itself is one of inherent difficulty. The act seeks to provide that where one mine drains another, the mine thus benefited shall pay its proportion of the cost of drainage. Where a tunnel or lower adit drains another mine, it is doubtful whether the act has any application as such drainage is only incidental. *Baird v. Williamson*, 4 *M. R.*, 368; *Townsend v. Peasley*, 2 *M. R.*, 612. But where one mine hoists the water of another a natural equity is more apparent, and Statutes in aid of contribution, even giving a royalty to the draining mine, have been enforced.—*Ahren v. Dubuque Co.*, 5 *M. R.*, 144.

Coal Mines.—Where in case of veins or deposits of the class represented by coal beds, one mine lies under the dip of another mine at a higher level, it is under servitude to the water flow of the mine above.—*Baird v. Williamson*, *supra*.

DITCHES AND WATER.

Right of Way.—G. S. § 2387.—Whenever any person or persons are engaged in bringing water into any portion of the mines they shall have the right of way secured to them, and may pass over any claim, road, ditch, or other structure; *provided*, the water be guarded so as not to interfere with prior rights.—*Nov. 7, 1861.*

Congressional Recognition of Easements.—R. S., § 2539.—Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.—§ 9, A. C., *July 26, 1866.*

Excepted in Patent.—R. S., § 2240.—All patents granted, or pre-emption or homesteads allowed, shall be subject to any vested and accrued water-rights, or rights to ditches and reservoirs used in connection with such water-rights, as may have been acquired under or recognized by the preceding section.—§ 17, A. C., *July 9, 1870.*

Claims Subject to Ditches, Flumes and Trails—Parol License.—G. S. § 2167.—All mining claims now located or which may be hereafter located, shall be subject to the right of way of any ditch or flume for mining purposes, or of any tramway or pack trail, whether now in use or which may be hereafter laid out across any such location; *Provided always*, that such right of way shall not be exercised against any location duly made and recorded, and not abandoned prior to the establishment of the ditch, flume, tramway or pack trail, without consent of the owner, except by condemnation, as in case of land taken for public highways. Parol consent to the location of any such easement accompanied by the completion of the same over the claim shall be sufficient without writings; *And provided further*, that such ditch or flume shall be so constructed that the water from such ditch or flume shall not injure vested rights by flooding or otherwise.—*Feb. 13, 1874.*

Parol License to Construct.—Where a mining ditch is constructed on government land or over the land of the owner, or of persons who give their consent, no condemnation proceedings are necessary; the ditch once constructed becomes a lawful easement under the Statutes above printed; or the consent may be treated as giving title by estoppel.—*Yunker v. Nichols*, 8 M. R., 61.

Condemnation where Necessary.—Where it is to be built across claims or other lands whose owners refuse consent, condemnation proceedings are necessary under the Eminent Domain Act. Const. Art. 16, Sec. 7. Notwithstanding the right of way granted to ditches by the Act of 1866 (R. S. 2339) a ditch, when carried across mining claims already located, must recognize their prior possessory rights and pay damages as in other cases of condemnation.—*Titcomb v. Kirk*, 5 M. R., 10; *Jennison v. Kirk*, 4 M. R., 504; *Noteware v. Sterns*, *Id.* 659.

Buyer Must Take Notice of.—A ditch is a physical and visible monument, and doubtless the grantee of land crossed by a ditch buys with presumptive notice of its existence.—*Oregon Co. v. Trullenger*, 4 M. R., 247; *Lampman v. Milks*, 21 N. Y., 505.

The Right of the Miner to Divert Water from its Natural Stream, in opposition to the common law, has been not only granted under the Act of Congress of 1866, but that Act has been construed by several decisions of the Supreme Court of the United States.—*Atchison v. Peterson*, 1 M. R., 583; *Basey v. Gallagher*, *Id.* 683; *Jennison v. Kirk*, 4 M. R., 504.

These decisions further recognize the right of "appropriation," as it is called, as a necessity in placer mining districts. The party who first appropriates the water for

mining purposes, obtains the right both as to parties who attempt to take it by tapping the stream above, or who need it in the stream below.—*Const. Art. 16, § 7.*

Incidents of Water Appropriation.—A party cannot locate a ditch in such a manner as to prevent the practical mining by hydraulic power or otherwise, of claims which it crosses; nor so as to cut off the water used by the hydraulic. When ditch crosses ditch, the latter claimant must adjust the crossings so as not to interfere with the full use of the prior ditch.—4 *M. R.*, 504.

Where a party has appropriated water for the purpose of working particular mining claims, after he has worked out the same he may extend his ditch and work other claims, or use the water for a different purpose, without losing his priority of right, even against a party who had dug a ditch and appropriated water from the same stream before the first claims were washed out —*Davis v. Gale*, 4 *M. R.*, 604.

A party may use the bed of a natural stream as his means of conducting water added to it by a ditch, without being considered as abandoning the water by mingling it with the original waters of the stream.—*Butte Co. v. Vaughn*, *Id.* 552.

The change of locality where the water is used does not forfeit the right.—*Maeris v. Bicknell*, 1 *M. R.*, 601.

How Conveyed.—Right to water appropriated may be transferred like other property. A ditch is real estate and is conveyed by deed.—*Smith v. O'Hara*, 1 *M. R.*, 671; *Bradley v. Harkness*, 11 *M. R.*, 389.

In the sale of a mine the water and ditches do not pass as an "appurtenance" to the claim.—*Quirk v. Falk*, 2 *M. R.*, 19.

A patent does not divest Ditch Rights.—*Dodge v. Marden*, 1 M. R., 63.

Relation.—When a ditch is made for the appropriation of water, the right relates back to the commencement of the work on the ditch, if the same be completed within a reasonable time.—*Maeris v. Bicknell*, 1 M. R. 601.

But if the ditch be not completed with due diligence, the right only accrues from the time the water is actually appropriated.—*Ophir Co. v. Carpenter*, 4 M. R. 640.

Location of Ditch Right.—At the point where water is taken from the stream, post notice as follows:

DITCH NOTICE.

Midland Ditch.—I claim 50 inches of the water of this stream, to be taken by ditch from this point to claims on *Wightman's Gulch*, in *Summit Mining District*, *Rio Grande County*, for mining purposes.

WILLIAM H. COCHRAN.

March 17, 1887.

LOCATION CERTIFICATE OF DITCH AND WATER RIGHT

TO ALL WHOM THESE PRESENTS MAY CONCERN:—Know ye that I, *William H. Cochran*, of *Del Norte*, in the County of *Rio Grande*, in the State of Colorado, do hereby declare and publish as a legal notice to all the world, that I have a valid right to the occupation, possession and enjoyment of all and singular, that tract or parcel of land lying and being in *Summit Mining District*, in the County of *Rio Grande*, in the State of Colorado, for ditch and mining purposes, bounded and described as follows, to-wit:—The *Midland Ditch*: Head of ditch tapping the waters of the *Atamosa River* at a point indicated by notice there posted on the right bank about one mile above *Summitville*, 100 yards S. W. from cabin occupied by *Jacob Ellison*, and 10 feet N. E. from tree blazed with letters "M. D.;" course of ditch, thence, etc., etc.

I also claim 50 inches of the waters of said river, to be conveyed by such ditch, with the exclusive right of way for said ditch; together with all and singular, the hereditaments and appurtenances thereunto belonging or in anywise appertaining. Witness my hand and seal this 17th day of *March*, in the year eighteen hundred and eighty-seven.

WILLIAM H. COCHRAN, [Seal.]

STATE OF COLORADO,
County of *Rio Grande*, 1887.

Before me the subscriber, a Notary Public in and for said County, personally appeared *William H. Cochran*, to me personally known to be the same person described in, and who executed the within Declaration of Occupation, and acknowledged that he signed, sealed and published the same as his free and voluntary act and deed, for the uses and purposes therein set forth. Witness my hand and Notarial Seal this 17th day of March, A. D. 1887.
[L. S.] Chas. A. Braslow, Notary Public.

The above form is statutory, *G. S.* § 2678. The Section which prescribes the form adds that it shall be subscribed with the "full christian and surname" of the party. These "Declarations of Occupation" are the only instruments where there is a statutory requirement to discard initials, and it is advisable to conform to it, although it is doubtless merely directory on this point.

The ditch should be staked and work commenced and prosecuted with reasonable diligence. If the notice and record be not followed up within a reasonable time by actual work in carrying out the intended appropriation they amount to absolutely nothing.

It is always advisable to record a water claim although a ditch actually constructed and used may have enforceable equities without record.

Irrigation Ditches.—A special and peculiar form of record is required for irrigation ditches (1887, *page* 315), and the whole subject of irrigation has become clouded with interminable legislation; to such an extent that no step in regard to water rights can be taken without counsel.

For form of incorporation of ditch company see CORPORATIONS.

RIGHT OF WAY. ROADS, TRAILS AND OTHER EASEMENTS.

Hauling Quartz.—G. S. § 2394.—Every miner shall have the right of way across any and all claims for the purpose of hauling quartz from his claim.—*Nov. 7, 1861.*

State Power to Regulate Easements.—R. S. § 2338.—As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.—§ 5. *A. C. July 26, 1866.*

Highways.—R. S. § 2477.—The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.—§ 8. *A. C. July 26, 1886.*

How Established.—A trail or tramway may be established by consent of owner over located or patented land without deed or other writings.—G. S. § 2407 *See page 109.*

Or such an easement may in certain cases become valid by estoppel.—*Yunker v. Nichols, 8 M. R., 164.*

Over the unoccupied public domain, roads may be established without any license or formality, under the operation of the above section of the Act of Congress (2477) and under the State statute all locations are attempted to be made subject to a right of way for hauling quartz.

Whether patented or only taken by location, a public highway or other easement cannot, against the consent of the owners, be laid out, except after condemnation and payment of damages.—*Titcomb v. Kirk, 5 M. R., 10.*

Not Divested by Patent—A mineral patent does not divest a valid highway already on the ground when patent was applied for.—*Copp's M. L., 89.*

And when construed in connection with the Act of Congress and the power of the State to regulate easements it would seem that the patent would be subject to any valid

subsisting easement affecting the ground prior to the application. Such an easement saves itself and needs not to be protected by filing an adverse claim.—*Rockwell v. Graham*, 10 *Pac.*, 281; 9 *Colo.* 36.

DUMP.

Right to Dump.—There is no statute on the subject of dumping; and the right to dump, as of necessity or by custom, across lower claims, has never been brought under the adjudication of the Court of last resort in any of the mining States, to the writer's knowledge; but in the case of *Equator Co. v. Marshall Co.*, U. S. C. Ct., an action brought to restrain the dumping across a claim lying below on the mountain slope, it was *held*, as of course, that it was no case for injunction, unless where work was being prevented, shafts filled, life endangered or other gross and continuing injury, and the remedy, if any, was to be enforced by action at law.

In a later suit in the same Court between the same parties it was *held* that when continuous dumping had been carried on by owners and lessees, without proof or attempt at proof, as to the injury done by each party, that only nominal damages could be recovered against an owner, the owners not being responsible for the injuries done by their lessees; and there being no proof that the defendant, one of the owners, had ever taken an active part in the management of the mine, the jury found for the defendant.—*Little Schuylkill Co. v. Richards*, 10 *M. R.*, 661.

In the case of careless or wanton injury to improvements the upper claim is of course liable; but the right to dump over unimproved and valueless surface ground is

doubtless such an easement as may be allowed by State statute (R. S. § 2338) or proved as a District custom.

A Dump is Real Estate and passes to the grantee without special mention. But a contract to sell the ore found in it need not necessarily be by deed.—*Smart v. Jones*, 15 *Com. Bench, N. S.*, 717.

PLACERS.

Open to Location and Patent.—R. S. § 2329.—Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.—§ 12. *A. C.* July 9, 1870.

Size of Claim.—R. S. § 2330.—Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any *bona-fide* pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any *bona-fide* settler to any purchaser.—*Ibid.*

Twenty Acres to One Locator.—R. S. § 2331.—Where placer-claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer-claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral land in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or pre-emption purposes.—§ 10. *A. C.* May 10, 1872.

Location and Location Certificate.—Notice and Stakes.—*G. S. §2385.*—The discoverer of a placer claim shall, within thirty days from the date of discovery, record his claim in the office of the Recorder of the county in which said claim is situated, by a Location Certificate, which shall contain: First, the name of the claim, designating it as a placer claim; second, the name of the locator; third, the date of location; fourth, the number of acres or feet claimed, and fifth, a description of the claim, by such reference to natural objects or permanent monuments as shall identify the claim.

Before filing such location certificate the discoverer shall locate his claim: First, by posting upon such claim a plain sign or notice, containing the name of the claim, the name of the locator, the date of discovery, and the number of acres or feet claimed; second, by marking the surface boundaries with substantial posts, and sunk into the ground, to-wit: one at each angle of the claim. *

* NOTE.—Filed with Secretary of State, March 12, 1879, and came a law under Sec. 11, Art 4, State Const.

Legislation Concerning Placers.—Placer claims were not covered by the original Mining Act of 1866.

The Act of 1870 brought them within congressional recognition and made them open to patent.

There was no Colorado statute applying specially to this class of claims prior to 1879; they have been at all times regulated as to size, labor, mode of location, etc., by the District Rules to a much greater extent than lode claims.

What Constitutes a Placer.—As commonly and properly understood a Placer claim means a location in which gold is found loose in the debris and not in the vein or in place: it includes gulch claims, cement diggings, old channels, drift diggings, etc., but the Land Office construction of the U. S. Mining Acts is to the effect that any deposit of any kind of recognized mineral, which is not *in place* is intended by the law to be a placer, and may be located and patented as such. They ruled that salines were placers (*Copp M. L.* 321); subsequently made a distinction that deposits of salt could be located, but not salt

springs; (*Id.* 321, 324) and finally held that no form of salt land could be entered as a placer.--(13 *L. O.* 53). Borax beds have been specially held patentable as placers, and the general instructions direct that soda, sulphur, alum and asphaltum may be so treated.--(9 *L. O.* 210.)

Oil.—Quarries.—Oil land may be located and patented as a placer, (9 *L. O.* 51; 10 *L. O.* 307). A deposit of building stone, that is to say, a Quarry, is a Placer as the Land Office construes the law (11 *L. O.* 213); also kaolin or fire clay, (9 *L. O.* 165; 10 *L. O.* 83.)

Size of Claim that may be Located.—The amount of ground which may be located is limited to 20 acres to each individual or person; of course a corporation is one person without reference to the number of its incorporators; an association of persons may locate a claim in common not exceeding 20 acres to each individual in the association, and not exceeding 160 acres to the entire association. It requires 8 *bona fide* locators to lawfully claim 160 acres. The names of nominal parties are often used to locate placer ground and such nominal association is not questioned in land office proceedings, but its validity may well be doubted when contested in court.

Size of Claim that may be Patented.—In the case of *Smelting Co. v. Kemp*, 11 *M. R.*, 673, followed by *Tucker v. Masser*, 113 *U. S.*, 203, the Supreme Court of the United States decided that there is no limit to the number of placer locations which may be united in one claim and patented upon one application. Such practice has been followed by the Land Office so that any number of contiguous acres made up of several 160-acre locations may be patented as one claim. The Supreme Court state in their opinion that there is a distinction between a "location" and a

"claim:" that where sundry locations have been made and conveyed to one purchaser they become not his "claims" but his "claim." This first decision having been followed as a settled point in the subsequent case, the reason for the decision, however unsatisfactory, becomes immaterial.

No Limitation to Placer Entry—"Claim" and "Location."—In direct opposition to all precedent policy with regard to the disposition of the public lands, but apparently consistent with the forced construction given to the word "claim" in the above cited cases, the Land Office holds not only that a placer claim may consist of any number of adjoining locations, but that the \$500 improvements required by law means so much improvements on such entire claim and need not be found on each location or on each 160 acres.—(12 *L. O.* 288; *In re Good Return M. Co.*, *Id.* 214.) There is nothing to prevent the patenting in one application on \$500 expenditure of as much placer ground as an applicant can afford to pay for at the government price.—(7 *L. O.*, 4). The abuses possible under this holding are manifest.

Conformation to U. S. Sectional Subdivisions.—The Act speaks of making survey for the placer claim conform as near as possible with the rectangular subdivisions of the public lands, but under the practice this provision has been almost wholly disregarded, except on subdivided sections.—10 *L. O.*, 338.

Area in Feet or Acres.—By the following table the number of feet necessary to include any desired number of acres when in the shape of a square or parallelogram may be ascertained.

Claim	660 x 330	feet	contains	5	acres.
"	500 x 500	"	"	5.73	"
"	660 x 660	"	"	10	"
"	1320 x 660	"	"	20	"
"	800 x 1089	"	"	20	"
"	933½ x 933½	"	"	20	"
"	1320 x 1320	"	"	40	"
"	2640 x 2640	"	"	160	"

43560 square feet equal 1 acre. A square 208.71* feet in length and width makes one acre.

Placers, how located.—The State Act of 1879 brings placer claims substantially to the same status as lode claims as to mode of location, but only thirty days are allowed in which to complete the location and make the record.

Of course no discovery shaft is required, but the statute implies that mineral shall have been found before the right to locate upon the same as a placer claim accrues.

The procedure in the location of a placer claim is as follows:

Presuming that free gold or some other valuable deposit is known to exist on the ground, the claimant, if he desires the benefit of the 30 days allowed to the discoverer, should place a notice conspicuously as follows:

FORM OF PRELIMINARY NOTICE.

Nellie Moore Placer Claim.

The undersigned claims 20 acres for placer mining purposes with 30 days from date to complete location and record. *June 9, 1886.*
WILLIAM SABINE.

We do not consider that the above notice is essential in all cases, but it is customary. If the claimant was the actual first discoverer of the mineral it might not be required; but if the existence of the gold or other deposit had been a matter of common notoriety we do not see why one person more than another could claim the time intended for a discoverer without some such notice.

Proceeding to complete the location the claimant must post upon the claim the statutory notice (*page 117*) which may be in form as follows :

FORM OF LOCATION NOTICE.

Nellie Moore Placer Claim.

The undersigned claims 20 acres for placer mining purposes, as staked on this ground. Date of discovery, *June 9, 1886.*
WILLIAM SABINE.

SECOND FORM.

Nellie Moore Placer Claim.

The undersigned claims 1320 feet in length along the gulch by 660 feet in breadth, for placer mining purposes, as staked on this ground. Discovered *June 9, 1886.* WILLIAM SABINE.

Name.—Dates.—The statute requires the claim to be named, although such had not been theretofore the general custom. It will be noted that the notice on the stake must contain the date of *discovery*, while the record must contain the date of *location*.

Stakes and Ties —The locator then stakes his claim placing a "substantial post," "sunk into the ground" at each angle of the claim. No center stakes are required. Accuracy and strictness in fixing and marking the boundaries cannot be too severely urged. Of course some of the angles must be tied to "natural objects" or "permanent monuments" in order to make a proper location certificate or record according to the terms of the statute. We advise the same as in case of lode claim. [*See page 46.*]

Record.—The notice being erected and the ground surveyed and staked, the location is complete and ready for record, the location certificate being in form as follows :

FORM OF PLACER LOCATION CERTIFICATE.

KNOW ALL MEN BY THESE PRESENTS, that I, *William Sabine*, of the County of *Conejos*, State of *Colorado*, claim, by right of discovery and location, the *Nellie Moore* placer claim, containing

twenty acres (or 1320 feet in length by 660 feet in width), situate in Conejos Mining District, County of Conejos, State of Colorado, bounded and described as follows, to-wit:—Beginning at stake at corner No. 1, etc.; (*here insert description, giving a bearing to each line, and tying one or more corners to a government corner, well-known natural object or permanent monument, etc.*) Date of Location, June 9, 1886. Date of Certificate, June 10, 1886.

WILLIAM SABINE.

PLACER CONTAINING LODGE.

Claim Intersected by Lode.—R. S. § 2333.—Where the same person, association, or corporation is in possession of a placer-claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer-claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer-claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of the placer-claim, or any placer-claim not embracing any vein or lode-claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer-claim, an application for a patent for such placer-claim which does not include an application for the vein or lode-claim shall be construed as a conclusive declaration that the claimant of the placer-claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer-claim is not known, a patent for the placer-claim shall convey all valuable mineral and other deposits within the boundaries thereof.—*Sec. 11. May 10, 1872.*

Known Lodes Excluded.—An application for patent to a placer claim is not supposed to include any known lode running through it, unless such lode is owned by the applicant and especially designated in the application, but it covers any after-discovered lode.

A placer and lode claim not contiguous, the lode not being within the lines of the placer, cannot be embraced in the same application for patent.—5 L. O. 162.

What are Known Lodes.—Where a lode within the placer lines has been discovered, located and recorded, and has kept its labor up to the time of the placer application, it is clear that such is a “known lode” beyond any possible danger of construction.

But where lodes, though known, have not been considered worth locating, or after location have been abandoned, or where they have been known as matter of common knowledge to be within the lines, as in the case of outcrops not known to be worth working—these points admit of more or less controversy.

In the case of *Reynolds v. The Iron Silver M. Co.*, 116 U. S., 687, the Court ruled that the lode in or underlying the Wells & Moyer Placer being shown to be known to the applicants, could not be recovered by them in ejectment as against adjoining lode owners who had worked beyond their side lines into the deposit.

ANNUAL LABOR ON PLACERS.

Void Attempted State Renunciation of Annual Labor.—G. S. § 2386.—On each placer claim of one hundred and sixty acres or more, heretofore or hereafter located, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made by the first day of August, 1879, and by the first day of August of each year thereafter. On all placer claims containing less than one hundred and sixty acres, the expenditure during each year shall be such proportion of one hundred dollars as the number of acres bears to one hundred and sixty. On all placer claims containing less than twenty acres, the expenditure during each year shall not be less than twelve dollars; but when two or more claims lie contiguous, and are owned by the same person, the expenditure hereby required for each claim may be made on any one claim; and upon a failure to comply with these conditions, the claim or claims upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made: *Provided*, that the original locators, their heirs, assigns,

or legal representatives, have not resumed work upon the claim after failure and before such location: *Provided*, the aforesaid expenditures may be made in building or repairing ditches to conduct water upon such ground, or in making other mining improvements necessary for the working of such claim.—Sec. 2, *Mar.* 12, 1879.

Forfeiture by Co-Owner in Placer.—Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, to-wit: the first of August, 1879, for the locations heretofore made, and one year from the date of locations hereafter made, give such delinquent co-owner personal notice in writing, or, if he be a non-resident of the State, a notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and mailing him a copy of such newspaper, if his address be known, and if, at the expiration of ninety days after such notice in writing, or after the first publication of such notice, such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures.—*Id.*

The above section 2386, so far as it fixes a time for annual labor on placer claims different from that supposed to be fixed by the Congressional law, has been declared inoperative.—*Sweet v. Webber*, 7 *Col.* 450.

It would seem to be superfluous also in its declaration as to what annual labor consists of.

Forfeiture.—The above printed section having been declared invalid as to the amount of labor on placers would seem to be equally so in its attempt to change the Congressional act as to time in which to effect forfeiture.

It also fixes a special and different period for the annual labor; and a special and different time for its notice to go into effect. All its main provisions being thus invalid, it is doubtful whether any part of the section remains of any force whatever.

The forms of affidavit, notice and proof of forfeiture given for lode claims (p: 64-68) will apply with obvious alterations to placers.

Judicial Rulings as to Labor on Placers.—The question of annual labor on placers is a curious instance of the growth of law by following the first judicial oversight as a precedent until the wrong interpretation is firmly rooted as the true one. By no fair construction of the act of 1872 could it be applied to anything except lode claims. The very amount of the labor was fixed by the number of feet "in length along the vein." But, in 1876, in *Chapman v. Toy Long*, 1 *M. R.*, 497, placers were referred to incidentally as subject to the labor law. In *Jackson v. Roby*, 109 *U. S.* 440, without argument, the same *dictum* was made. Later, in *Carney v. Arizona Co.*, 65 *Cal.*, 40, the point was definitely made as to whether such labor was required on placers, and the Supreme Court of California, in a very weak argument sustain the affirmative of the proposition. In *Sweet v. Webber*, 7 *Colo.*, 413, the precedents thus established were followed without any reference to the original statute.

TAILINGS.

Each Claim Must Take Care of Its Own.—*C. S.* § 2393.—In no case shall any person or persons be allowed to flood the property of another person with water, or wash down the tailings of his or their sluice upon the claim or property of other persons, but it shall be the duty of every miner to take care of his own tailings, upon his own property, or become responsible for all damages that may arise therefrom.—§ 9, Nov. 7, 1861.

The relation of one claim to another where both are situate in the same gulch or on the same water-flow is sought to be regulated by the above section passed in 1861, which fixes in terms a matter of long continued dispute in California. The two early cases in the California Reports, *Esmond v. Chew*, 5 *M. R.* 175 and *Logan v. Driscoll*, 6 *Id.* 172 are

inconsistent with each other and are severely reviewed in a strong opinion in the case of *Lincoln v. Rodgers*, 1 Mont., 247 14 M. R.

Injunctive Relief Against Deposit Of.—Notwithstanding the above Act the subject is apt to be more or less involved with questions of license, contract and estoppel, as such a statute could not possibly be carried into effect. No placer claim can be mined without encroaching more or less upon the claims below. There is nothing in the Act to prevent the location of ground for the special object of a dump for tailings, but if this has not been done and the ground below has been taken up by other parties, the statute is plain that the upper cannot lawfully use the lower claim as a place of deposit. To do so would be an invasion of the legal rights of the lower claimant for which he might recover damages, but it does not follow that in every case the courts would interfere to restrain the upper claimant by injunction.

And if the lower claims could be shown to have been located or purchased for any purpose of annoyance to the upper claims the want of equity in such case upon an application for injunction would be manifest.—*Edwards v. Allouez Mining Co*, 7 M. R., 577.

The incidental flow of mud and fine tailings not sufficient to accumulate as deposit, but affecting only the character of the water or causing but slight damage, if an injury at all, is not such as to be interfered with by injunction.—*Atchison v. Peterson*, 1 M. R., 583.

Location of Tailings Claim.—A party may take up a claim for mining purposes which has been and still is used as a place of deposit for tailings by another—but in such case his mining right would be subservient to the prior right of deposit.—*O'Keiffe v. Cunningham*, 9 M. R. 451.

Property In.—Vacant land upon which tailings have been deposited may be claimed and worked the same as land containing natural deposits, and trespass maintained by the claimant against a party carrying away such tailings.—*Rogers v. Cooney*, 14 M. R.

When tailings are allowed to flow upon the land of another he is entitled to them.—*Jones v. Jackson*, 14 M. R.

Tailings are property of the miner who made them, so long as not abandoned and retained on his own land or under his control.—*Id.*

For the rulings enjoining Hydraulic mining under the plea of stopping the filling up of the river beds and destruction of the meadow lands, in what are known as the *Debris cases*, see *Woodruff v. N. Bloomfield Co.*, 18 Fed. 753; 27 *Id.* 795; *Hardt v. Liberty Hill Co.*, 27 Fed. 783; *Golden Gate Co. v. Superior Court*, 65 Cal. 187; *Peo. v. Gold Run Co.*, 66 Cal. 133; *Hobbs v. Amador Co.*, *Id.* 161. The evil from which relief was sought in these cases was doubtless great, and their general result may have been right. But certain incidents in their progress detract from their force as a final adjudication upon proper principles and by due process of law. They are candidly styled by Sawyer, J., "a suit between the mining counties and valley counties." (18 Fed. 792.) That an injunction against flowing tailings was not an injunction suspending "the general and ordinary business" of the Hydraulic Company, and could, therefore, be granted *ex parte*, without regard to the statute prohibiting injunctions of such effect without notice, is an instance of special pleading too obvious to be justified. (65 Cal. 189; 66 *Id.* 314.) The continued prevention of mining after defendants had built their impounding dam, (27 Fed. 783) extending the inhibition to drift mining (27 Fed. 795), and the imposition

of heavy fines paid over to complainant's solicitors (Id.) show the dangerous limits to which judicial power may be extended.

MILL SITES.

Extent. How Patented.—R. S. § 2337.—Where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz-mill or reduction-works, not owning a mine in connection therewith, may also receive a patent for his mill-site, as provided in this section.—§ 15 A. O. May 10, 1872.

Location Of.—Mill sites are located by staking, and recorded according to the form given in Section 2678 of the General Statutes.

LOCATION CERTIFICATE OF MILL SITE.

TO ALL WHOM THESE PRESENTS MAY CONCERN: Know ye that I, *Richard J. Malone*, of the City and County of *Lancaster*, Commonwealth of *Pennsylvania*, do hereby declare and publish as a legal notice to all the world that I have a valid right to the occupation, possession and enjoyment of all and singular that tract or parcel of land not exceeding five acres, situate, lying and being in *Crystal Hill* Mining District, in the County of *Saguache*, in the State of Colorado, bounded and described as follows, to-wit: The *Buckhorn* mill site, *Beginning at corner No. 1 from which, etc., (description continued)* to the place of beginning, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining. Witness my hand and seal this 22d day of September in the year of our Lord one thousand eight hundred and eighty-seven.

Richard J. Malone. [SEAL.]

For form of acknowledgment see page 113.

A name is not *essential* to a mill site, but it is convenient and preferable to style it by a name.

Post Location Notice on claim similar to form on page 121. Location and record should be accompanied or followed by substantial occupancy or valid improvements.

By the U. S. Law they are limited to five acres, but by the district regulations were sometimes restricted to much less extent.

They cannot lawfully be located on mineral land (4 L. O. 3) and if so located may be contested by proceedings in the Land Office.—5 L. O. 51.

And a mill site adjoining the end line of a lode claim being presumed to contain the extension of the vein, will be considered as mineral land, and its entry as a mill site will not be allowed; if a mill site abut against a side line, the same presumption does not exist, and its entry may be permitted.—*Mollie Mullin Mill Site*, 7 L. O. 4.

But the presumption that land on which a lode claim end line abuts, is necessarily mineral, may be rebutted by proof.—7 L. O. 179; 8 *Id.* 188.

Two Classes of Mill Sites.—The latter clause of Sec. 2337 *supra*, provides for patenting of land actually occupied by a mill, but the former and more important portion of the section provides a means of procuring surface area to cover such ground as may be used in any manner incidental to the mine. The \$500 improvements on the lode are sufficient to enter both lode and mill site, if the mill site is *used or occupied* by the applicant for mining or milling purposes.

Proof of Improvements.—The early practice of the Land Office was to patent a mill site when applied for in connection with a lode, without proof of either use or improvements. This practice was taken advantage of to patent building lots, and all sorts of claims as mill sites, but

the Department now requires proof not only that it is non-mineral land, but that it is used for milling purposes or in connection with the mine, as for instance, for dumping purposes or as holding the plant or surface appurtenances of a mine. The cabins, boarding houses, etc., always necessary in operating a mine, are a sufficient mining use under this ruling.

This proof of the use of the site in connection with the mine is by affidavit of the applicant and of two disinterested witnesses. Intention to use is not sufficient. *In re Ontario S. M. Co.*, 13 L. O. 159.

When patent is applied for upon a mill site *alone* it seems clear under the Act that it is confined to instances where a mill or reduction works actually exist upon the ground, or are in course of construction.

Adverse and Protest.—When a mill site application conflicts with a prior claim of another to the ground for like purposes it may be adverse; or it may be adverse or be adverse by a lode or placer, or where in conflict with a mineral claim it may be defeated by a protest and proof of being located on mineral land.—9 L. O. 71.

MINING UNDER SURFACE IMPROVEMENTS.

G. S. § 2388.—No person shall have the right to mine under any building or other improvement unless he shall first secure the parties owning the same against all damages, except by priority of right.—Nov. 7, 1861.

G. S. § 2408.—When the right to mine is in any case separate from the ownership or right of occupancy to the surface, the owner or rightful occupant of the surface may demand satisfactory security from the miner, and if it be refused may enjoin such miner from working until such security is given. The order for injunction shall fix the amount of bond.—§ 13. Feb. 13, 1874.

A miner has no right to work within the enclosure surrounding a dwelling house, corral and other improvements of another.—*Burdge v. Underwood*, 4 M. R. 618.

SEVERANCE.

Separation of Surface and Mineral Estate.—The ownership of the minerals may be vested in one while the ownership of the surface is in another. This severance is often created by deed, in which case it amounts practically to a partition on a horizontal plane, the two estates being entirely separated, except that from the nature of the case, the surface owner can usually claim the right of support while the mine owner can claim such incidental use of the surface as is necessary to enable him to win the minerals.—*Caldwell v. Fulton*, 3 M. R. 238; *Horner v. Watson* 11 M. R. 21 *Amer. R.* 55; *Marvin v. Brewster Co.* 13 M. R. 40; 14 *Amer. R.* 322.

But the subject is important in the Western States chiefly with reference to the question of whether claims located on government land and claims patented by the government take both surface and minerals in all cases, or whether in any case there is an actual or implied severance of the minerals from the surface, either from the nature of the claim or from the language of patents confirming the claim.

Patented Claims Generally.—As to patented Claims it has been the policy of the government to grant the entire estate, and retain no interest with the Patentee. It has been so held in the case of a Mexican Grant confirmed by Patent, although under the original grant the claimant had received no title to the mines of gold and silver from the Mexican Government. It was considered that the con-

firmatory patent of the United States conveyed the soil, and everything under the soil, and that if the Government had intended to reserve the royal metals, as the Mexican Republic had done, it should have been so expressly stated in the patent.—*Moore v. Smaw*, 12 *M. R.* 418.

Patented Lode Claims.—As the Patents to Lode Claims contain no reservations which would indicate a severance, therefore none exists, and we do not know that the contrary has ever been claimed.

Patented Placers.—As to Placer Claim Patents, they convey not only the placer deposits and the surface, but also all veins except those known to exist when the patent issued which are especially excepted.

Patented Mill-Sites.—As to Mill-Site Patents, it is required that such claims be located on non-mineral land. But they contain under the form now in use a reservation saving to the proprietor of any vein or lode the right to enter for the purpose of extracting the ore should such vein or lode "penetrate, intersect, pass through or dip into the premises hereby granted." This, beyond question, gives the right to follow a lode under them on the dip; but no reservation greater than this seems to be authorized by the Act of Congress; a valid lode claim overlying the ground could have protected its rights by an adverse; and the question remains singularly open as to whether or not a mill site supposed at the time of entry to be non-mineral conveys such veins as may be found to go through it on the strike—with general rules of construction in favor of the proposition that it carries them.

Patented Agricultural Claims.—As to Patented Agricultural Claims obtained in good faith, not at the time of entry known to be mineral land, minerals afterwards discovered certainly belong to the Patentee; but where land

has been entered as agricultural upon which mineral locations existed, in defiance of the rights of mineral claimants, such patents could be set aside as against the mineral claimants; and it was *held* in the case of *Gold Hill Co. v. Ish*, 11 *M. R.* 635, that such a Patent was absolutely void as to the land covered by the mining claim.

A patent, however, howsoever procured, usually operates to pass title, and in such case the holder should be declared a trustee for the use of the owner of the mine. See p. 81. *Salmon v. Symonds*, 30 *Cal.* 302.

School Lands.—School Sections 16 and 36, known to contain minerals at the time of the admission of Colorado as a State, (August 1, 1876) under the Act for admission, approved March 3, 1875, did not pass to the State.—6 *L. O.* 152; 4 *L. O.* 66; 6 *L. O.* 45.

Where such mineral character was discovered prior to survey they remained the property of the United States, and claims may be located upon them.—5 *L. O.* 178; *Heydenfeldt v. Daney Co.*, 13 *M. R.* 204. But where their mineral character has been discovered since the date of admission aforesaid, and since the time they were surveyed, they have become the property of the State and are controlled by the Act of the last session.—*Acts of 1887*, page 328. By Act approved April 2, 1884, (*L. O.* 29) the State is reimbursed for school sections lost to the State by reason of their mineral character.

Patented Town Sites.—In this case there is an express severance of the minerals. The holder of the lot takes no title to any located claims. The lot is subject to entry to get the mines of gold or silver which it may contain.—*R. S.* § 2386, 2392.

The surface and the subjacent strata are rarely owned by separate parties, in this State, except where gold has

been discovered in towns entered under the Town Site Acts. The Town Patent, where valid mining locations have been made on such discoveries, does not grant the minerals, and the ground is open to location as mining claims, subject to the right of the surface proprietor. If the mine was located after the occupation by the lot-owner of the surface, but before the entry of the town site for patent, the mines and surface are then separate estates, each to be enjoyed under the various applications of the maxim: "*sic utere tuo ut alienum non laedas.*"—*The Smoke House Lode Case*, 12 Pac. 858. *King v Thomas*, *Id.* 865.

Unpatented Claims.---A lode claim covers the entire surface as well as the veins within it. Before the passage of the Mining Acts it had been held (*Brown v. 49 Co.*, 9 M. R. 600) that a lode location also included float gold below its apex which had evidently come from that particular vein. It is evident from the Congressional grant of the surface without excepting any form of deposit that a lode location made in good faith upon an ore-producing vein, without the aid of any such decision would include placer deposits within its lines both above and below the vein.

But an unpatented placer claim covers no lodes, and a lode claim may be located across it. An unpatented mill site, town site or ranch claim, does not include either veins or deposits of gold or silver.

TUNNEL SITES.

Record.—G. S. § 2389.—If any person or persons shall locate a tunnel claim for the purpose of discovery, he shall record the same, specifying the place of commencement and termination thereof, with the names of the parties interested therein.—*Nov. 7 1861.*

250-Foot Provision. Right of Way to Tunnel.—G. S. § 2390.—Any person or persons engaged in working a tunnel, within the provisions of this chapter, shall be entitled to two hundred and fifty feet each way from said tunnel, on each lode so discovered; *Provided*, they do not interfere with any vested rights.

If it shall appear that claims have been staked off and recorded prior to the record of said tunnel, on the line thereof, so that the required number of feet cannot be taken near said tunnel, they may be taken upon any part thereof where the same may be found vacant; and persons working said tunnel shall have the right of way through all lodes which may lie in its course.—*Ibid.*

Line of Tunnel. Neglect to Work for Six Months.—R. S. § 2323.—Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.—§ 4 A. C. May 10, 1872.

Inoperative State Tunnel Law.---A section similar to Section 2390, above printed, was found in the Territorial Corporation Law, but was repealed when the present Corporation Law was adopted; it gave 250 feet on each side of the tunnel to all territorial corporations organized for tunnel purpose.

We regard this Section 2390 as inoperative, if not wholly obsolete, except as to the grant of a right of way in its last three lines. It was passed in 1861, long before any Congressional attempt to regulate the subject, and could not now be practically enforced.

Line of Tunnel.---The principal contention on the Tunnel Law of Congress has always been as to the extent of the line of the tunnel therein mentioned. The Land Office, as early as 1872, ruled that it included only "the width

thereof and no more." (5 L. O. 130.) The point arose in the case of *The Corning Tunnel Co. v. Pell*, in Boulder County, and has been decided by the Supreme Court.—4 *Colo.*, 517. 14 *M. R.*

They adopted the Land Office construction. The facts in the case were as follows: The Slide Lode applied for patent, and was adversed by the Corning Tunnel Co. The Slide Lode had been discovered after the location of the Tunnel Site, and while it was being diligently prosecuted in front of the tunnel, but not on its line, as above defined; it had not been cut in the tunnel at the time of suit brought. But the Court based its decision upon a full construction of the Act, construing the same upon both its language and the general scope of the Mining Acts.

That such would be the final construction of the Act had already been generally acquiesced in by the profession. The result is that as to the lodes not already cut by the tunnel, tunnel sites hold practically no claim whatever under the Congressional Act.

Lodes cut in a tunnel must be staked and recorded exactly as in the case of lodes discovered at the surface, except that no discovery shaft is required—the discovery in the tunnel taking its place—and the location stake should be set on the surface at a point midway between side lines and above the discovery in the tunnel. Such location notice should state the fact that the lode was discovered in the tunnel and the number of feet in from the mouth. In fixing the surface line approximate calculations should be made for the dip. There have been no adjudications that we know of upon the exact form of tunnel locations, but attention to these suggestions would certainly make a valid tunnel lode location.

Location of Tunnel Site.---Any party running a tunnel would probably hold the tunnel itself (*i. e.*, the bore as far as actually run), without any record whatever, (8 L. O. 71.) This is done every day in the case of cross-cuts, which are simply tunnels on a small scale. But to claim any rights for its line or otherwise under the Act of Congress it should be staked and recorded. Of course, a lode discovered in a tunnel, after the lode has been duly located and recorded on the tunnel discovery, is as valid upon an unrecorded as upon a recorded tunnel—its title having by such independent location become a matter wholly apart from the tunnel location. A party has no right without license to start a tunnel within the lines of a claim belonging to another.

LOCATION CERTIFICATE OF TUNNEL.

TO ALL WHOM THESE PRESENTS MAY CONCERN: Know ye that I, *Vassar E. Stollbrand*, of the County of Pueblo, State of Colorado, do hereby declare and publish as a legal notice to all the world that I have a valid right to the occupation, possession and enjoyment of the *Colorow* Tunnel and Tunnel Site, situate in *Folsom* Mining District, County of *Garfield*, State of Colorado, described as follows, to-wit: Mouth of tunnel situate on the Eastern slope of *Rangely* Mountain, (fix tunnel mouth by metes, course and distance); course of tunnel, north 20 degrees, east 3,000 feet, lineal and horizontal measurement to stake set at end of course. And I claim for line of tunnel a width of four feet on each side of the center line of said course, and the right to all lodes which may be discovered in the due prosecution of said tunnel within 750 feet of each side of the center of said line. I also claim a square tract of land 250 feet on each side of the mouth of tunnel and lying immediately below the mouth of tunnel, as staked upon the ground for dumping purposes.

Witness my hand and seal this eleventh day of January, A. D. 1888,
VASSAR E. STOLLBRAND.

For form of acknowledgment see page 113.

TUNNEL NOTICE. (*To be posted at the mouth.*)

The *Colorow* Tunnel, located January 11, 1888, by *Vassar E. Stollbrand*; course, north 20 degrees east, 3,000 feet; dump, 500 feet square, as staked.
VASSAR E. STOLLBRAND.

Abandonment.---A tunnel may, like any other kind of claim, be abandoned; but neglect to work does not operate to effect an abandonment; such neglect only operates to deprive it of tunnel rights along its line. (5 *L. O.* 34.) The fact that no labor has been done for many years is evidence of abandonment, but not conclusive. As before stated, (*page* 51) abandonment is a question of fact, and in the case of tunnels is wholly independent of the annual labor.

Patent. Adverse Claims.---There is no provision of law for patenting a tunnel site. But it may maintain an adverse claim for the protection of its line and tunnel rights. (8 *L. O.* 88; 173.) A lode located on a tunnel discovery adversely of course on its own merits as a lode location.

The Land Office, in the decision above cited, held that a tunnel *must* adverse to protect its tunnel rights; but we apprehend that a patent granted across the line of a tunnel would not affect the rights of such tunnel so far at least as its easement or right of passage, which is its principal practical value, is concerned. But it is safer to either adverse or procure a deed from the applicant for the right or territory clouded by the application.

Annual Labor by Tunnel.---That Section two thousand three hundred and twenty-four of the Revised Statutes be, and the same is hereby, amended so that where a person or company has or may run a tunnel for the purposes of developing a lode or lodes owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said Act; and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said Act.—§ 1. *Feb.* 11, 1875.

The annual labor of \$400 on each claim may be performed under the above section by work done on a tunnel, cutting, or which is driven to cut, such claims.—2 *L. O.* 39; 5 *L. O.* 5; *Id.* 34.

The Patent Expenditures of \$500 may also be made on such tunnel. (4 L. O. 67.) A party may patent one lode on the line of his tunnel for each \$500 of labor spent in driving the tunnel.

TAXATION.

FULL TEXT OF ACT OF 1887.

Mines Declared Taxable.—Sec. 1. All mines and mining property of the class heretofore exempted by the Constitution of the State of Colorado, shall hereafter be assessed and taxed, and the taxes levied enforced by sale of the property taxed, in default of payment, in the same manner as is now or may be provided by law, in the case of other classes of taxable real estate.

Description.—Sec. 2. The number of the survey lot or the name of the lode or claim, and the name of the mining district, shall be sufficient description for purposes of taxation and assessment of mining property.

Basis of Assessment.—Sec. 3. All mines and mining claims, and possessory rights therein, producing mineral during the year, exceeding in value the sum of one thousand dollars (\$1,000), shall be assessed by the assessor for the purposes of taxation and revenue, as follows, viz.: The assessor shall compute and ascertain the gross proceeds in dollars and cents derived from the mine and mining claim, to be valued during the preceding fiscal year; such mine or mining claim shall be valued for revenue purposes at a sum not exceeding one-fifth of the sum thus ascertained, and said mine or mining claim shall be assessed and taxed accordingly; and if such gross proceeds are derived from a group of several mines or mining claims contiguous to each other, owned or held by the same person, company or corporation, then such ascertained sum shall be equally divided among and prorated to each of such claims, and they shall be valued and taxed accordingly.

Possessory Claims Not Exempt.—Sec. 4. In case the mine or mining claim shall not be patented, or entered for a patent, but shall be assessable and taxable under this act, on account of producing gross proceeds, then, and in that case, the possession shall be the subject of the assessment, and if said mining property be sold for taxes levied, the sale for such taxes shall pass the title and right of possession to the purchaser, under the laws of Colorado.

Clerk to Obtain List of Patented Lots.—Sec. 5. It shall be the duty of the County Clerk of each County to obtain a list of all mineral survey lots, patented or entered for patent, or the name and locality of all productive possessory claims in his County, on or before the first day of May in each year. He shall be allowed by the County Commissioners his outlays necessarily expended in obtaining the same. Such list shall be used by the assessor to aid in listing any claims not already listed by the owners.—*Approved April 4, 1887. Session Laws p. 310.*

Mine Tax Prior to the Above Act.—Under the Territory, improvements on all claims were taxed and the claim itself when it had been patented.

The State was admitted August 1st, 1876, with a Constitution which (Art. X § 3) exempted mines from all tax except on proceeds, for ten years. During this period which expired just prior to the last session of the legislature, the improvements were still taxed, but an attempt to collect a tax on the proceeds was held invalid on the ground that the Statute was not sufficiently specific.—*Stanley v. Little Pittsburg Co. 6 Colo. 415.*

The Act Now in Force.—The new act did not go into effect in time to allow of an assessment for 1887. Under its provisions the mine itself, whether patented or otherwise, will be assessed but the assessment will be based on its product. The basis of valuation (not to exceed one-fifth the gross mill returns) is not an unfair one. No means of ascertaining it are given by private inquisition but if the owner refuse information on this point he would weaken his own position on any attempt to cut down the assessment.—*Breeze v. Haley, 13 Pac. 913.*

The Supreme Court of the United States has decided that unpatented claims are taxable.—*Forbes v. Gracey, 94 U. S. 762; 14 M. R.*

LIENS.

How Affected by Patent.--R. S. § 2332.*** Nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining-claim or property thereto attached prior to the issuance of a patent.--§ 13 A. C. July 9, 1870.

Patent although relieving claims from adverse rights, does not relieve from liens already attached against the property. On the other hand, the patented title enures to the benefit of the lien holder.--*Copp*. 88.

Judgments are liens for six years from date of entry where the Transcript of Judgment has been duly filed.--*Code*, § 232. But execution should issue within one year. *G. S.* § 1835.

A mining partner in certain cases seems to have a lien for his advances in excess of those of a co-partner.--*Duryea v. Burt*, 11 *M. R.* 395.

See MINER'S LIEN : EXAMINATION OF TITLE.

MINERS' LIEN.

In What Cases Allowed--Several Claims Worked Together--Work Under Lessees.--G. S. § 2137.--The provisions of this act shall apply to all persons who shall do work or furnish materials for the working or development of any mine, lode, mining claim or deposit yielding metals or minerals of any kind, or for the working or development of any such mine, lode or deposit in search of such metals or minerals; and to all persons who shall do work or furnish materials upon any shaft, tunnel, incline, adit, drift or other excavation, designed or used for the purpose of draining or working any such mine, lode or deposit. Said lien shall attach in every case to such mine, lode and deposit, and to such shaft, tunnel, incline, adit, drift or other excavation, though such shaft, tunnel, incline, adit, drift or other excavation be not within the limits of such mine, lode or deposit: *Provided*, that when two or more such mines, lodes or deposits, owned or claimed by the same person or persons, shall be worked through a common shaft, tunnel, incline, adit, drift or other excavation,

then all the mines, lodes or deposits so worked shall, for the purposes of this act, be deemed one mine: *And provided further*, that this section shall not be deemed to apply to the owner or owners of any mine, lode, deposit, shaft, tunnel, incline, adit, drift or other excavation, when the same shall be worked by a lessee or lessees.—§ 7. *March 2, 1883.*

Water Rights and Easements Included.—G. S. § 2139.—Said lien shall likewise attach to rights of water and rights of way that may in any manner pertain to any kind of property hereinbefore specified and to which such lien attaches.—§ 9. *Id.*

A miner whose wages or contract money is in default, secures a lien by filing with the County Recorder a statement substantially as follows:

FORM OF LIEN STATEMENT.

KNOW ALL MEN BY THESE PRESENTS, That I, *Alexander Gullett* do hereby give notice of my intention to hold and claim a lien upon all the following described property to-wit: The *Thomas a Kempis* Lode Mining Claim in *Ruby* Mining District, County of *Gunnison*, State of Colorado, of which property *John L. Roult* and *Joseph Watson* are the reputed owners. Said lien is claimed for work and labor done by me upon said lode (*or materials furnished by me to said lode for the working and development of the same and used therein*) for said owners and at their special instance and request between the first day of July, A. D. 1887 and the first day of December, A. D. 1887, both dates inclusive upon the following abstract of indebtedness:

Whole amount of debt	\$742.00
Whole amount of credit	441.00

Balance due the claimant	\$301.00
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Witness my hand this second day of January, A. D. 1888.

ALEXANDER GULLETT.

STATE OF COLORADO, {
County of *Gunnison*, { ss.

Before me, the subscriber, *V. F. Axtell*, a Notary Public in and for said County, personally appeared *Alexander Gullett*, who, being duly sworn, saith that the foregoing statement and abstract of indebtedness, and the matters and things therein set forth, are true to the best knowledge, information and belief of affiant.

Sworn and subscribed before me this 2nd day of January A. D. 1888.

V. F. AXTELL,
Notary Public. [Seal.]

Time to File.—The above statement must be filed within 60 days after quitting, when the work is done for the owner; within forty days when done under a contractor.

When the claimant is a sub-contractor, strike out "for said owners and at their special instance and request" and insert "at the special instance and request of *Daniel Roberts*, a contractor under said owners."

Six Months to Sue.—An action must be commenced to enforce the lien within six months after filing the statement or the lien is lost.

A Sub-Contractor may stay money coming to his principal under the terms of G. S. § 2142 by warning in advance, filed with the Recorder.

Where mines are worked as a group the whole are considered as one mine for lien purposes.

A lien, it seems, may be filed for any balance however small.

A miner has no Statutory lien upon the ore.

A party working under lessees has no lien.

A party engaged in hauling ore from the mines to the quartz mill has no lien on the mine.—*Barnard v. McKenzie*, 9 M. R. 403.

A mining foreman or superintendent has a lien.—*Palmer v. Uncas M. Co.*, 70 Cal. 611. See *Smallhouse v. Kentucky M. Co.* 9 M. R. 388; *Rara Avis Co. v. Bauscher*, 9 Colo. 385.

Lien of Surveyor or Civil Engineer.—G. S., § 2138.—The provisions of this act shall apply to surveyors, civil and mining engineers doing any work of surveying or platting of any mines, mining claims, lodes or mineral deposits, and they shall have like lien and claim as other persons under the provisions of this act.—§ 8. Mar. 2, 1883.

The following form is adapted from the Statute to the case of surveyor's lien :

FORM OF STATEMENT FOR SURVEYOR'S LIEN.

KNOW ALL MEN BY THESE PRESENTS, That I, *Albert E. Chase* do hereby give notice of my intention to hold and claim a lien upon all the following described property to-wit: The *St. Francis de Sales* Lode Mining Claim in *Queens* Mining District, County of *Clear Creek*, State of Colorado, of which property *J. Frank Snodgrass* is the reputed owner. Said lien is claimed for work and labor done by me in surveying and platting said lode, at the special instance and request of said owner, by *running the lines of the same as Survey Lot No. 333 for United States patent and making plat of the same for the same purpose between the 17th day of March and the first day of April A. D. 1888*, both dates inclusive, upon which accrued the following abstract of indebtedness :

Whole amount of debt	\$60.00
Whole amount of credit	20.00

Balance due the claimant	\$40.00
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Witness my hand this 9th day of April A. D. 1888.

ALBERT E. CHASE.

Verify as on page 142.

To claim a lien the surveyor is not required to be a U. S. Deputy : and an underground as well as surface survey is protected. No lien is given for surveying a mill site.

CONVEYANCE OF MINING PROPERTY.

Deeds.—The ordinary printed forms of deeds are usually sufficient to convey mining claims, but owing to the common practice of employing conveyancers totally disconnected with the legal profession, few abstracts when the deeds as recorded at length are examined from the memorandum on the abstract can show an unbroken line of perfect conveyances. A common imposition is to present a deed in the form of a warranty purporting to convey "all the right, title and interest of the party of the first part,"

which amounts to no more than a quit-claim; or to make the consideration of a warranty deed nominal, which has the same effect.

Deed Subdividing Lode Claim.—Owing to the relations of the dip to the strike when a line is drawn across a lode claim at right angles to the side lines at the surface, such line being intended for the division line between the part retained and the part sold, such line when carried vertically downward may cut off the vein on its dip in such a way as to divide it in an unexpected manner. If, for instance, at the surface, it begins at the “west end of Discovery Shaft,” it may leave the bottom of such shaft entirely on one fraction of the lode within a comparatively few feet of sinking. Such result or a similar result will invariably occur where the vein has a dip, unless the end lines are at an exact right angle to the strike of the vein.

FORM OF WARRANTY DEED ON PATENTED CLAIM.

THIS INDENTURE made this *tenth* day of *June* in the year of our Lord one thousand eight hundred and eighty-seven between *Thomas M. Bowen* of the County of *Rio Grande*, State of *Colorado*, party of the first part and *John Cleghorn* of the same place, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of *ten thousand* dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained and sold and by these presents doth grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, all the following described real estate, situate in *Summit Mining District*, County of *Rio Grande*, State of *Colorado*, to-wit: *The Goleonda Lode Mining claim, known as Survey Lot No. 777, situate on South Mountain being 1,500 feet in length and 300 feet in width, together with all and singular the lodes and veins within the lines of said claim (and not excepted on the official plat) and the dips, spurs, mines, minerals, easements, dumps, plant, fixtures, improvements, rights, privileges and appurtenances thereunto in anywise belonging.* To have and to hold the lands, tenements and hereditaments hereby conveyed unto the said party of the second part, his heirs and assigns, forever. And the said party of the first part, for himself, his heirs, executors and administrators, doth hereby covenant and agree with the said party of the second part, his heirs and assigns, that

the said premises and every part thereof are free and clear of and from any and all liens, incumbrances, trusts and taxes, and that he, the said party of the first part, his heirs, executors and administrators, unto the said party of the second part, his heirs and assigns, the said premises and every part thereof against himself, his heirs and assigns, and every other person lawfully claiming or to claim the same or any part thereof, shall and will warrant and forever defend; always saving and excepting the same provisos, reservations and limitations contained in the patent of the United States issued for said survey lot. In witness whereof the said *party* of the first part *hath* hereunto set his hand and seal.

THOMAS M. BOWEN. [Seal.]

STATE OF COLORADO, } ss.
County of *Rio Grande*. }

I, *George C. Berlin*, a Notary Public in and for said County, do hereby certify that *Thomas M. Bowen*, who is personally known to me to be the same person described in and who executed the within indenture, personally appeared before me this day and acknowledged that *he* signed, sealed and delivered the said indenture as *his* free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and Notarial seal, this *tenth* day of *June*, A. D. 1887.

GEORGE C. BERLIN,
Notary Public. [Seal]

Witnesses.—No attesting witnesses are required to a deed conveying land in Colorado.

Wife's Signature.—The wife is not required to join in the husband's deed nor the husband in the wife's deed, nor is any separate acknowledgment required where the deed is made by a married woman. The only special provision relating to conveyance when property is conveyed by a married woman, is that her warranty is made void by Statute, and her deed cannot be effective to pass an after acquired title.—G. S. § 223. This is the Statute in terms, but it is doubtless qualified by the act of 1874, G. S. § 2278, giving a married woman power to "sell and convey" the same as if she were sole.

Warranty of Claim Entered for Patent.—Use the same form inserting the words "*to be,*" before "issued,"

and adding the words "*as entered in the Land Office,*" after the words "said survey lot" in the saving clause of the warranty.

Warranty of Possessory Claims.—Use the same form as for "Patented Claims," omitting the words "Survey Lot No.—," and omitting the clause between the words "forever defend" and "in witness." Instead of such clause insert "Always saving and excepting the United States of America."

Special Warranty.—When the grantor desires to warrant his own chain of title, but not against parties claiming under other locations, insert before the words "shall and will warrant," this clause "*by, through or under the said party of the first part, or his grantors, as the, or parcel of the, Golconda claim or location.*"

QUIT-CLAIM DEED ON POSSESSORY LODE CLAIM.

THIS INDENTURE, made this *thirty-first* day of *December*, in the year of our Lord one thousand eight hundred and eighty-*six* between *James M. Daily*, of the County of *Arapahoe*, State of Colorado, party of the first part, and *Relief Jackson*, of the County of *Tippecanoe*, State of *Indiana*, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of *One Thousand* Dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath remised, released and quit-claimed, and by these presents doth remise, release and quit-claim unto the said party of the second part, his heirs and assigns, all the following described real estate, situate in *The Consolidated Ten Mile* Mining District, County of *Summit*, State of Colorado, to-wit: *The De Soto* Lode Mining Claim, situate on the west slope of *Sheep Mountain*, 1,500 feet in length and 150 feet in width. Together with all and singular the lodes and veins within the lines of said claim, and the dips, spurs, mines, minerals, easements, mining fixtures, improvements, rights, privileges and appurtenances therunto in anywise belonging. To have and to hold the lands, tenements and hereditaments hereby conveyed unto the said party of the second part, his heirs and assigns, forever. In witness whereof the said party of the first part hath hereunto set his hand and seal.

JAMES M. DAILY. [Seal.]

Lot Patented or Entered for Patent.—Use the same form, adding to the description after the word “claim,” “*known as survey lot No. —.*”

If the quit-claim be a mere release the operative words are, as above used “remit, release and quit-claim;” but if it be intended to pass any after acquired title, add the words “*sell and convey,*” after the word “quit-claim.”—G. S. § 201.

Short Form of Deed.—By act of 1887 (Sess. Laws p. 226) short forms of warranty and quit-claim deeds are introduced. The implied warranty which the vendor in ignorance of its nature is made liable for by this statutory form, is totally inapplicable to mining claims whether patented or possessory. It would make the vendor liable, if liable for anything, for a fee simple title even to making good the exceptions on the face of the patent. If used in conveying a possessory claim there is a breach of the warranty the moment the instrument is delivered. What is conveyed by the so called short form of quit claim deed, it is impossible to say. The entire set of forms should be discarded in the mining counties. Where used for conveying other classes of realty they are almost equally treacherous

Acknowledgments.—In the State are taken before any Notary Public, Supreme, District or County Judge, Clerk of Supreme, District or U. S. Circuit Court, or County Recorder, whether the lands lie in his county or elsewhere; before a Justice of the Peace of the county where the claim is situate, or before a Justice in another county with the addition of a certificate from the Recorder as to his signature, &c.—*Acts of 1887, p. 230.* G. S. § 211.

Beyond the State they should be taken before a Commissioner of Deeds, or Clerk of a Court of Record; if before any other officer, special certificates are required which are almost invariably found defective.—*Id.*

In any foreign country they should be taken in open court and certified by a Judge of the Court under its seal; or, before a Mayor of a city under the corporate seal; or before a Consul under the seal of his Consulate.—*Id.*

For form of Acknowledgment by an individual see page 146. The following are correct forms in the case of corporations and deeds executed under Power of Attorney.

BY CORPORATION.

STATE OF COLORADO, { ss.
La Plata County, {

I, *Solon W. Pingrey*, a *Notary Public* in and for said county, do hereby certify that *John Glenn*, President of the *Coldstream Mining Company*, who is personally known to me to be such President, and the same person who as such President, affixed the corporate name and seal of said Company to the above Indenture, personally appeared before me this day and acknowledged the same to be the free and voluntary act and deed of the said Corporation for the uses and purposes therein set forth.

Witness my hand and Notarial Seal this *first* day of *May* A.
D. 1888. SOLON W. PINGREY,
[Seal.] Notary Public.

BY ATTORNEY IN FACT.

STATE AND DISTRICT OF COLORADO, { ss.
Arapahoe County, {

I, *William A. Willard*, Clerk of the Circuit Court of the United States, in said District, do hereby certify that *Asa F. Middaugh*, Attorney in Fact, of the within named *I. N. Large*, who is personally known to me to be such Attorney in Fact, and the same person within described as such Attorney in Fact, and who affixed the name and seal of his said principal to the within Indenture, personally appeared before me this day and acknowledged the said Indenture to be the free and voluntary act and deed of the said *I. N. Large* for the uses and purposes therein set forth.

Witness my hand and the Seal of said Court, this *first* day of
May A. D. 1888. WILLIAM A. WILLARD,
[Seal.] Clerk of Court.

Agreements for Deed,—Are usually in the shape of a Title Bond, time being made of the essence of the contract in every form in use; but an executory contract in any other form under seal, is of equal validity.—G. S. § 215-217. A Title Bond should always express a part of the consideration as paid or contain some covenant by the vendee, as for instance to develop the property—to avoid the possibility of its being held void for want of mutuality.

Naked Title Bonds have been ruled in this State to be mere options and therefore without consideration and revocable. *Smith v. Reynolds*, 2 M. R. 227; *Finerty v. Fritz*, 1 M. R. 437. But where the holder of the bond pays a part of the consideration or agrees to develop the property or in any other manner gives a valid consideration the agreement is valid, and when recorded binds the property.

TITLE BOND.

KNOW ALL MEN BY THESE PRESENTS, That I, *Dennis Sullivan*, of the County of *Arapahoe*, State of *Colorado*, am held and firmly bound unto *David P. Day* of the County of *Ouray* in said State in the penal sum of *Forty Thousand* Dollars to be paid to the said *David P. Day*, his heirs, executors, administrators or assigns; to which payment, well and truly to be made I do bind myself, my heirs, executors and administrators, and every of them, jointly and severally, firmly by these presents.

Witness my hand and seal this *fourth* day of *July*, in the year of our Lord one thousand eight hundred and eighty-seven.

WHEREAS, the above bounden Obligor hath this day sold to the said *David P. Day* certain real estate situate in *Battle Mountain* Mining District, County of *Eagle*, State of *Colorado*, to-wit: The *Legality* Lode Mining claim (Survey Lot No. 99) containing 1,500 feet in length by 300 feet in width, on *Battle Mountain*.

Together with all and singular the lodes and veins within the lines of said claim (and not excepted on the official plat) and all mines, minerals, dumps, plant, fixtures, machinery, tramways, improvements, rights, privileges and appurtenances thereunto in anywise belonging for the sum of *Twenty Thousand* Dollars to be paid to the said obligor, his executors, administrators or assigns or deposited to his credit in the *Denver National Bank*, *Denver*, *Colorado*, on or before the *tenth day of May*, A. D. 1888, and for the further consideration that said obligee shall before said last mentioned date expend the sum of at least *One Thousand* Dollars in the actual underground development of said property.

NOW THEREFORE, the condition of the above Obligation is such, that if the above bounden Obligor, *his* heirs or assigns, on payment or deposit of the said sum of *Twenty Thousand* Dollars in manner aforesaid, and expressly within the time limited as aforesaid, time being of the essence of this contract as to such payment or deposit, shall make, execute, acknowledge and deliver at *his* own cost and charges, good and sufficient Deed or Deeds of *General Warranty* to the said *David P. Day*, his heirs and assigns or to such person, persons or company as *he* shall nominate, conveying said premises with good and perfect title, free from incumbrance, then this Obligation to be void, otherwise to remain in full force and virtue.

DENNIS SULLIVAN. [Seal.]

In consideration for the option expressed in this Obligation I agree to expend the sum of \$1,000 therein mentioned upon the within described property within three months from the date of this Bond. Witness my hand and seal this *fourth* day of *July* A. D. 1887.

DAVID F. DAY. [Seal.]

WORKING CONTRACT SALE.

For and in consideration of the sum of \$500 to me in hand paid by *Robert Barbour*, the receipt whereof is hereby acknowledged, I, *Chas. H. Morris*, do hereby agree to place said *Robert Barbour* in full and sole possession and control of the *Fair Deceiver* Lode Mining Claim, situate, etc. : with authority to work and prospect the same as *he* sees fit for the term of *sixty days* from date, provided only that such work be done in good and workmanlike manner, and that any ore taken out shall be separated and left on the dump and not removed during the lifetime of this contract. And at any time within said period on tender to me of the further sum of \$4,500, I agree to deliver a good and sufficient Warranty Deed to the said *Robert Barbour* his heirs and assigns, conveying said above described premises absolutely and clear of encumbrance.

In case no such tender is made, said sum of \$500 is to be treated as the consideration of this option and right of testing and to be forfeited to me absolutely.

In case my title is found defective and I fail to make it good and clear within said period I agree to pay to said *Robert Barbour* the cost of abstract and the vendee's attorney's reasonable charges for examination of title and to refund said sum of \$500.

The ore taken out during said period is to be the property of the party who remains or becomes the owner at the end of said period of sixty days.

Time is of the essence of this contract in all particulars.

Witness my hand and seal this *10th* day of *May* A. D. 1888.

CHARLES H. MORRIS. [Seal.]

SALE SUBJECT TO EXAMINATION.

The undersigned *William M. McMechen* of etc., hath agreed to sell to *Charles Kaufman*, of etc., and said *Kaufman* hath agreed to buy of and from said *McMechen* the *King Solomon*

Lode Mining Claim situate in *Gregory* Mining District, *Gilpin* County, Colorado, for the consideration of \$18,000 to be paid within *six months* from date, fee simple (or good possessory) title to be delivered and warranted, clear of liens. Title subject to approval of *Geo. H. Kohn*, attorney for purchaser. Costs of deeds to be paid by vendor; of examination of title, by purchaser. Vendor to deliver at his own cost certified abstracts of title within ten days to said attorney. Deeds to pass on tender of the sum above mentioned within the period of six months above limited. If no tender is made within such period the purchaser shall be in default unless he show the title materially defective, or a prior breach of contract by vendor or that material misrepresentations as to the mine or mineral have been made to him by the vendor or by parties in the interest of the vendor, and thereupon either party may proceed for specific performance or for damages or both or otherwise as he may be advised.

Witness the hands and seals of said parties this 24th day of April, A. D. 1888.

WILLIAM M. McMECHEN. [Seal.]
CHARLES KAUFMAN, [Seal.]

CONTRACT TO SELL AND TO BUY.

I, *Ed. O. Wolcott*, Vendor, hereby agree to sell to *Charles S. Thomas*, and I, *Charles S. Thomas*, Purchaser, agree to buy of the said *Ed. O. Wolcott* the *Dream* Placer Mining Claim situate etc.

The agreed consideration of said sale is \$1,000 cash in hand paid the receipt whereof is hereby acknowledged: \$3,000 to be paid within sixty days from date hereof and \$5,000 within ninety days from such date, making a total consideration of \$10,000.

Said Vendor within ten days from date will deliver to purchaser or his attorney an abstract of title duly certified by the Clerk and Recorder of said County or by some reputable abstract office, together with all the original title papers which are in his possession or within his power to produce.

And within said time will place in escrow in the *Denver National Bank* a good and sufficient warranty deed conveying to said *Charles S. Thomas*, or such person as he shall nominate, the said premises clear of encumbrance, to be by such bank held in escrow until final payment be made under this contract or default is made under the same. Deposit in said bank to the credit of Vendor shall be equivalent to payment of any of said installments.

Time is of the essence of this contract as to each and every installment and if any installment or installments be not paid within the time or times hereby limited therefor, all previous installments shall be and remain the property of said Vendor, the deed in escrow shall be returned to him for cancellation and the property shall remain his own, unallected and unencumbered by this contract. But if he fail to deliver abstract within said period or to deposit said deed in escrow, or if his title prove encumbered or otherwise not marketable, vendee may recover any and all

installments paid or may sue for specific performance and for a perfect title or for damages or otherwise as he may be advised.

Witness the hands and seals of said parties this *teenth* day of *May*, A. D. 1888.

EDWARD O. WOLCOTT. [Seal.]
CHARLES S. THOMAS. [Seal.]

A better because a fairer contract than the last above given is a sale by deed, securing the unpaid installments by note and mortgage.

The terms of sale are so variant, the temptations to evade become so great with the fluctuations in value, that it is always preferable to state the bargain fully to an attorney jointly agreed on and whose compensation is not made contingent on the sale, and to have him place the bargain in such form as will express, without fiction or verbiage, the real intention of the parties.

Escrow.—Where a title bond or other executory contract is delivered it is usually accompanied by a deed executed and acknowledged and placed in *escrow*. An *escrow* amounts to a deposit with a third party of an unrecorded deed to be delivered on certain conditions, the title bond being recorded in the meantime. Such *escrow* is usually in the shape of a deed enclosed in a sealed envelope and endorsed as follows:

TO A. A. DENMAN, CASHIER:—You are authorized to deliver the within Deed to *Jo Reynolds*, his agent or order, upon payment to me, or deposit to my order, of the sum of *ten thousand* dollars, on or before the *first* day of *January*, A. D. 1889. Meanwhile you will hold the same irrevocably. If payment is not made on or before said date, you will return the same to me for cancellation.

JOHN L. ROUTT.

November 30, 1888.

An *escrow* is often placed on deposit without any title bond, or the agreement is delivered on condition of not going on record, the vendor objecting to clouding the title by recording executory agreements which will perhaps never result in a conveyance. Such an *escrow* is valid in all respects, except that of giving the purchaser record security.

MINING LEASE.

Written or Verbal.—The lease if for more than one year must be in writing to avoid the statute of frauds (G. S., § 1517) and should be recorded. If for a less period it is still in general reduced to writing and the covenants being peculiar cannot be too particularly expressed.

Set Work.—In large mines worked on the tribute system the lease is generally verbal between the foreman and the miner, and is more in the nature of a contract of hiring, the foreman retaining general control of the work.

Dead Work.—The following form is correct to the extent of the usual covenants, but there are often special covenants added in regard to "dead work" and other matters. Dead work is a term of the popular language and means sinking shafts and running drifts, adits or cross-cuts or it may embrace everything except *stoping* and the timbering incidental to stoping. Its meaning being so general it should not be used at all and the intention should be covered by more exact expressions.

It is a common stipulation to require no royalty for ore extracted in sinking or in driving levels. Where dead work is to be paid for, care should be taken to express whether the compensation is to come "out of the first mill returns" or "out of the royalty." In the latter case the lessor pays for all of it. In the former he pays a share equivalent to his proportion of the proceeds. In wording this covenant a personal liability may be incurred if not properly expressed.

The royalty reserved necessarily varies, 20 or 25 per cent. being the usual amount, and 5 and 60 per cent. being extreme limits.

FORM OF LEASE.

THIS INDENTURE, made this *first* day of *June*, in the year of our Lord one thousand eight hundred and eighty-eight, between *William A. Hamill, of the County of Clear Creek, State of Colorado*, lessor, and *George B. Tyler, of Hastings, State of Nebraska*, lessee or tenant, witnesseth, that the said lessor, for and in consideration of the royalties, covenants and agreements hereinafter reserved, and by the said lessee to be paid, kept and performed, *hath* granted, demised, and let and by these presents doth grant, demise and let unto the said lessee, all the following described mine and mining property, situate in *Griffith Mining District, County of Clear Creek, State of Colorado*, to-wit: *The Dunderberg Lode Mining Claim, Survey Lot No. 172*, together with the appurtenances. To have and to hold unto the said lessee for the term of *one year* from date hereof, expiring at noon on the 31st day of *May*, A. D. 1889, unless sooner forfeited or determined through the violation of any covenant hereinafter against the said tenant reserved.

And in consideration of such demise, the said lessee doth covenant and agree with said lessor as follows, to-wit :

To enter upon said mine, or premises, and work the same mine-fashion, in manner necessary to good and economical mining, so as to take out the greatest amount of ore possible, with due regard to the development and preservation of the same as a workable mine, and to the special covenants hereinafter reserved.

To work and mine said premises as aforesaid steadily and continuously from the date of this lease ; and that any failure to work said premises with at least two persons employed underground, for the total number of ten days, may be considered a violation of this covenant.

To well and sufficiently timber said mine at all points where proper, in accordance with good mining ; and to repair all old timbering wherever it may become necessary.

To allow said lessor and his agents from time to time, to enter upon and into all parts of said mine for purposes of inspection.

To not assign this lease or any interest thereunder, and to not sublet the said premises or any part thereof, without the written assent of said lessor, and to not allow any person not in privity with the parties hereto, to take or hold possession of said premises, or any part thereof, under any pretense whatever.

To occupy and hold all cross or parallel lodes, spurs or mineral deposits of any kind which may be discovered by the said lessee, or any person under him, in any manner, within *seventy-five* feet of the center line of said lode, as the property of said lessor with privilege to said lessee of working the same as parcel of said demised premises.

To keep at all times the drifts, shafts, tunnels and other workings thoroughly drained and clear of loose rock and rubbish, unless prevented by extraordinary mining casualty.

To do no underhand stoping, and to make all shafts 7 feet long by 4 feet wide in the clear, and all drifts 7 feet high by 4 feet wide in the clear.

To deliver to said lessor, as royalty, 25 per cent. of all ore to be extracted from said premises, of like assay to that retained by said lessee, delivered at *some mill in Georgetown, in said County*, as soon as mined, without deduction or charge whatever, except lessor's proportion for packing. *Provided, always, that no royalty shall be required upon ore extracted in sinking shafts.*

To deliver to said lessor the said premises, with the appurtenances and all improvements in good order and condition, with all drifts, shafts, tunnels and other passages thoroughly clear of loose rock and rubbish, and drained, and the mine ready for immediate continued working (accidents not arising from negligence alone excusing) without demand or further notice, on the said 31st *day of May* A. D. 1889, at noon, or at any time previous, upon demand for forfeiture.

And finally, that upon violation of any covenant or covenants hereinbefore reserved, the term of this lease shall, at the option of the said lessor, expire, and the same and said premises, with the appurtenances, shall become forfeit to said lessor; and said lessor or *his* agent may thereupon, after demand of possession in writing, enter upon said premises and dispossess all persons occupying the same, with or without force and with or without process of law; or at the option of said lessor the said tenant and all persons found in occupation may be proceeded against as guilty of unlawful detainer.

Each and every clause and covenant of this Indenture shall extend to the heirs, executors, administrators and lawful assigns of all parties thereto.

In witness whereof, the said parties have hereunto set their hands and seals.

WILLIAM A. HAMILL, [Seal.]

GEORGE B TYLER, [Seal.]

For Acknowledgment, if desired, see p 146.

LICENSE.

Instead of a lease a license may be granted. The distinctions between a lease and a license are technical but important. They are not usual in this country, and on account of being revocable at the option of the owner, must obviously operate unfairly against the working party.

A license usually, is not exclusive, and invests the licensee with no property in the mineral until severed.

Although a license may be revoked at any time, the owner cannot arbitrarily oust the licensee without compensation for expenditures made.

It has been lately held in California that a lease which did not bind the lessee to work was a mere license: *Wheeler v. West* 11 Pac. 871. The holding is an extreme one and ought not to become in conscience a precedent for the express obligation to work is not one of the distinctions between lease and license.

PROSPECTING CONTRACT.

Much litigation has grown out of contracts of this kind owing to the loose manner in which they are generally undertaken and the strong inducement to shirk their obligations when a rich discovery has been made.—*Murley v. Ennis*, 12 M. R. 360. *Johnstone v. Robinson*, Id. 396.

The following form covers all the legal points necessary to be guarded in this class of contracts:

FORM OF PROSPECTING CONTRACT.

In consideration of provisions advanced to me by *John L. Donnellan* and of his agreement to supply me from time to time, as I may reasonably demand them, with tools, grub and mining outfit generally, and the sum of fifty dollars in hand paid, I agree to prospect for lodes and deposits in *Costilla* County, Colorado, and to locate all discoveries which I may consider worth the expenditure, and record the same in the joint names of said outfitter and myself, and in our names only, as equal owners. My time and labor shall stand against money, provisions, etc., as aforesaid. All expenses of survey and record shall be paid by the outfitter, and I agree to make no debts on account of this agreement. Work done on claims after record and before the expiration of this contract shall be considered as done under this contract, and no charge for labor or time shall be made for the

same. This contract shall stand good during the whole of the summer and fall of 1888, and during all of that period, I will not work or prospect on my own account, or for any parties other than said outfitter.

WM. MIDDLETON.

Dated June 1, 1888.

I agree to the terms above stated.

JOHN L. DONNELLAN.

The contract does not require a seal, and is not within the Statute of frauds, even if verbal.—*Murley v. Ennis*.

If the outfitter neglect to furnish the agreed and necessary supplies, such failure may be treated as a condition precedent, and the prospector is at liberty to search for mineral upon his own account.—*Id.*

EXAMINATION OF TITLE.

The written title to a mining claim begins with the location certificate, after which the conveyances and encumbrances should appear upon the abstract as in other classes of real estate.

Inspection and Survey.—In addition to the abstract of title a survey and local inspection are indispensable to security.

This inspection and survey should result in ascertaining the depth of Discovery Shaft, and whether it shows a well defined crevice: whether the location notice was duly posted and what it contains (p. 32); whether the stakes were properly set; whether the claim (as far as such fact can be fairly ascertained) is laid so as to cover the apex or general course of the Lode, and more especially what shafts, tunnels, prospect holes, stakes, notices, and improvements, indicate the presence of hostile claims, and if such intervening or overlapping hostile claims are found, their seniority or juniority should be at once established.

The abstract (at least until patent) may show a clear chain of title, and may be based on a record senior to other records on the same vein, and still the title may be absolutely worthless.—*Patterson v. Hitchcock*, 5 M. R. 542.

An adverse senior discovery may exist within a few feet of the discovery of the claim under examination. Every hole or stake in proximity to the claim should be examined, its history traced, and the possibility of danger from that source guarded against.

Whether the annual labor has been done must also be ascertained.

Such inspection having been made and the points peculiar to the title, as a mining title, being examined as they occur, the course of examination will be as follows:

1—THE ABSTRACT.

The abstract should be certified by the Recorder or by some respectable abstract firm, to contain all deeds and instruments filed or recorded, in the office of the Recorder, conveying, encumbering or in any manner affecting title to the property in question.

The abstract, however, amounts to nothing more than a guide or memorandum to the attorney in his examination.

Each deed and other instrument must be inspected at length, either by the original or by a certified copy.

2—LOCATION CERTIFICATE.

The material points to be observed in the location certificate are that (especially since May 10, 1872) it contains:

1. The name of the lode.
2. The names of the locators.
3. The date of location.

4. Such a description as will identify the claim, with course and extent from Discovery as required by G. S., § 2399. *See p. 46.*

5. That it claims no greater number of feet than was allowed at date of discovery.

6. And in cases of claims located before May 10, 1872, that it shows a sufficient number of locators to claim the full number of feet.

3—CONVEYANCES.

A mine is conveyed by deed or encumbered by mortgage the same as other real estate.

The description should contain :

1. The name of the lode.
2. If patented, the number of survey lot.
3. Mining district, County and State.
4. The slope and name of the mountain or gulch.
5. Usually in proper conveyancing, the number of feet in length and width are inserted and sometimes (especially if the conveyance be of part of a claim) their situation relative to center of Discovery Shaft.

The essential points of such description are the name of the lode, district, County and State.

Placer claims are usually described by their numbers, or if patented, by the survey lines or number of the survey lot. Locations since the Act of 1879 have been named the same as lode claims.

Each deed or other instrument must be examined to ascertain :—

That it has been signed by the proper parties.

That it is under seal.

That it sets forth a consideration.

That it contains a sufficient description of the premises.

That it contains sufficient words of conveyance.

That no lien or purchase money is therein reserved.

That there are no words of condition, exception, or reservation by which less than a fee simple estate may be limited, or by which a supposed conveyance may be construed as a mortgage.

That each letter of attorney grants sufficient power to sell and convey.

That each deed under power of attorney is executed in conformity with such power, and that the name of the principal, at least, appears in the body of the deed, and that it is signed "A. B. by C. D., his attorney in fact," or words equivalent thereto.

That each title bond or agreement to convey has been released unless a conveyance has been made in conformity with such bond or agreement.

That every mortgage, trust deed, attachment, miner's lien, certificate of levy, tax sale, judicial sale, judgment or transcript, has been either properly proceeded upon if title is claimed under it; or, on the other hand, satisfied of record if it is found in opposition to a clear title.

That especially in sales under a trust deed, due publication has been made and all the terms of such trust deed complied with as to time, place and terms of sale, etc., all of which should appear recited in the deed made by the trustee to the purchaser.

That every letter of attorney, deed, mortgage, etc., has been duly acknowledged before some proper officer; and especially that prior to February 12, 1874, each acknowledgement by a married woman has been "separate and

apart from and out of the presence of" her husband, and that the "contents, meaning and effect" of the deed were by the officer "fully explained to her." The wife's signature to deed conveying the husband's lands, has never been required in Colorado; but prior to February 12, 1874, where the property was held in the wife's name, their joint deed with her separate acknowledgement was required. *See p. 146.*

After Acquired Title.—A warranty deed conveys to the grantee any after acquired title of his grantor, and even a quit-claim made pending application, may carry the patented title to the grantee.—*Crane v. Salmon*, 41 Cal. 63. *Bradbury v. Davis*, 3 M. R. 398.

4—PATENTS.

In case of a patented claim, the land office receipt and patent should appear on the abstract, although the recording of these papers is not essential. If there be a receipt but no patent, the title is still possessory. If there be a patent it carries the legal title back to the entry, at least.

The form of patent is quite different from that of a patent for agricultural lands, and contains certain provisions as to easements, etc., and also a plat of the survey; and excepts the surface ground of any previous survey crossing the line of the lot conveyed. It also excepts the "claim" of the party who has entered the interfering lot. But this plat purporting to show all previous applications is not always correct and may not agree with the stakes of the interfering surveys as found on the ground.

In case of overlapping surveys, too much care cannot be exercised in observing to what extent they may cover the vein of the claim. The question of priority then becomes important. A junior patent upon a senior entry is certainly superior to a senior patent with a junior entry ;

that the patent even relates back to the date of the approval of survey is the general opinion of the profession. The idea that it may relate back to the discovery [as against adverse third parties] is not tenable, but in any event it is essential to examine behind the patent, back to the discovery, on account of the possibility of liens, which are not divested by the patent.

The plat contained in the body of each patent, examined in connection with the description in the same instrument, is intended to show just what ground within the exterior lines of the survey lot goes to the patentee. Such ground is colored. The ground excepted because previously granted by prior patents or eliminated by prior approved surveys, is not colored. *See p. 79.*

But this plat, as observed above, although transcribed from the files of the Surveyor General's office is not always correct [on account of mistakes of deputies in the field] and ought not to dispense with the precaution of inspecting the premises.

Where a patent has been issued there is no necessity for a strict examination of the location certificate or of the various acts of location. It cures all defects incident to the location as well as any break in the chain of title prior to the application. It does not however divest liens, and it may be possible for a party having a claim to an interest in the possessory title to prove an equity such as would make the patentee trustee of the title for his use. Nor does it dispense with the importance of a surface examination to see that the corners agree with the plat and that the survey-lot substantially encloses the vein.

5—LIENS AND JUDICIAL PROCEEDINGS.

A certificate should then be had from the Clerk of the District Court of the proper County, certifying that there

are no judgments, transcripts, attachments or other liens of record in such court against the property or appearing against the names of any of the present or former owners during such time as the abstract may show it was liable to lien through each particular owner. And that there are no suits pending affecting such property or the title thereto, either in such District Court, or in Supreme Court on error or appeal. If there are suits or liens he will so certify, with reference to term and docket whereupon they should be examined by inspection of the original records, with the same particularity as the deeds in the abstract, so that it may be seen to what extent they encumber the premises or threaten the quiet enjoyment thereof; and if such suits or liens have been satisfied or settled, it should be made plainly so to appear upon the records.

FORM OF CLERK'S CERTIFICATE.

STATE OF COLORADO,)
County of *Clear Creek*,) ss.

I, *Horace H. Atkins*, Clerk of the District Court in and for said County, do hereby certify that there are no judgments, attachments, transcripts, or other liens, appearing of record against (here insert name of each party who has owned an interest within six years), or any of them in said court within six years last past. And that there are no suits pending in said Court claiming or affecting title to the *Edelmira* Lode Mining Claim, in said County. Witness my hand and the Seal of said Court, this 12th day of *April*, A. D. 1888.

[L. S.]

HORACE H. ATKINS, *Clerk*.

A like Certificate should be had from the County Judge and from the Clerk of the Supreme and United States Courts.

The lien of a judgment (Code § 232) is confined to those cases where a transcript is filed in the Recorder's office and expires six years after date of its original entry.

There always, however, exists a possibility of lien not appearing on the abstract (*Laughlin v. Hawley*, 9 Colo. 170)

but which should disclose itself upon the Clerk's certificate. There may also exist an unrecorded miner's lien (*See p. 143*) or a lien in favor of the State on an audited account (G. S. § 1390) or for fine and costs in a criminal case, or against the surety on a criminal bond. G. S. §§ 277, 278.

If from the abstract or any of the above certificates there appears to have been a judicial sale, probate sale, tax or other official sale, the whole proceedings from the summons, petition, assessment or other starting point, must be examined as to their validity at all stages, up to their consummation by sheriff's deed or otherwise.

6.—PARTIES IN POSSESSION.

If parties are in actual possession, claiming adversely to the grantor, or claiming under him as lessees, their possession is an assertion of their claim whatever it may be of which the purchaser must take notice at his peril.

7.—CONCLUSION.—DUTY OF COUNSEL.

If from the abstract, or from any of the certificates, or from inspection of any deed, instrument or record in the chain of title; or as the result of his client's inspection and survey of the premises; or from any other source, the attorney is informed of any adverse title, or any outstanding trust or adverse interest, or of any missing conveyance in the chain of title, or of any serious defect in the body or acknowledgment of any instrument, of such a nature as to invalidate the title—the true condition of such title should then, with due secrecy, be expressed to the client. And when the attorney has satisfied his own mind upon all such questions of law as may have arisen during the course of his examination, the client has a right to be advised of all points which remain in doubt, and of any contingencies which may threaten the quiet enjoyment or would obstruct

a sale of the premises; and of all steps which if presently taken may avoid such conditions and perfect the title, so that the true value of the title in law shall be represented to the client, that is, the intending purchaser. For in all cases of examination of title, the attorney should be selected, or at least assented to, by the purchaser, if it be a sale; by the lender of money, if it be a mortgage; because from the necessity of the case, he acts in the interest of the purchaser and of the lender, and not in that of the grantor or of the mortgagor; the charge for his examination should be made against the same side; the charge for the conveyance, on the other hand, is by custom made against the vendor.

ALIENS.

Declaration of Intention.—One who has declared his intention to become a citizen of the United States may locate, enter and patent a claim the same as a citizen. No fixed period of previous residence is required before making such declaration.

Resident Aliens.—Section 27 of Article 2, of the Constitution of Colorado, provides that aliens who are *bona fide residents* may acquire and hold property the same as native-born citizens; while Chapter 3 of the General Statutes places all aliens on an equal footing with citizens.

This legislation, however, cannot affect their relations to the public domain of the United States.

A resident alien may acquire and hold patented claims by perfect tenure; but as to non-resident aliens (which might include all corporations organized outside of the United States) there is a want of parity in their status

under the Constitution and the Statute as above indicated, to the extent that the tenure of the former only, is guaranteed.

Naturalization.—It has been frequently decided that the act of Naturalization is retroactive, so that if an alien has located a claim and afterwards become naturalized his location would be good from its original date.—*Osterman v. Baldwin*, 6 Wall. 122; Copp. M. L. 176.

But naturalization after adverse rights had intervened might not have this effect.

There is a common impression that the naturalization of the father operates to make citizens of all his children who came to the United States under eighteen years of age; but this is the case only as to such children who were under that age at the date of the father's naturalization papers.—R. S. § 2172.

Cannot Locate or Patent.—An alien cannot locate a mining claim. By both the Act of 1866 and 1872 Congress restricts this privilege to citizens of the United States and persons who have declared their intentions to become such.—*Golden Fleece Co., v. Cable Co*; 1 M. R. 120. *Rosenthal v. Ives*, 12 Pac. 904. *Lee Doon v. Tesh*, 63 Cal. 45.

And as he cannot locate neither can he procure patent. Strict proof of citizenship is required by the Land Office in the case of every application. Neither can he support an adverse claim.—1 Copp. 45.

Attempting to Hold by Purchase.—As an alien can neither lawfully locate or patent, nor maintain an adverse claim it would seem to follow that he could not hold by purchase. That he cannot is held in *Tibbitts v. Ah Tong*, 4 Mont., 636, and *Chapman v. Toy Long*, 1 M. R., 497.

In the latter case it was ruled that aliens attempting to work a mining claim will be enjoined, notwithstanding

the fact of their entry in all other respects being senior to and better than that of the opposing parties; that the actual possession of the ground by Chinese did not prevent its being located by citizens not in possession.

It has on the contrary been decided in *Ferguson v. Neville*, 61 Cal. 356, that an alien may hold by purchase as against another claimant, on the doctrine that only the State could enforce a forfeiture, but that decision on this point is explained away in *Lee Doon v. Tesh*, 68 Cal. 43; and its holding is inconsistent with the policy of the Government, which throws the entire mineral public domain open to the citizen prospector and to the current of authority on like cases relating to the public domain.

Intermediate Holding by Alien.—Where an alien and a citizen make a joint location the deed of the two locators conveys perfect title.—*North Noonday Co. v. Orient Co.*, 9 M. R. 530.

And when an alien has made a location in all respects lawful except as to this matter of alienage and conveys to a citizen, such location is valid against all whose rights did not intervene before such transfer.—*Ibid.*

When the claim is held by purchasers the citizenship of the original locators is presumed.—*Garfield Co. v. Hammar*, 8 Pac. 153. And the conveyance by an alien as an intermediate grantor passes the title of the original locator.—*Ferguson v. Neville*, 61 Cal. 356.

The Late Alien Acts.—The Alien Act of Congress of March 3, 1887, does not apply to the States, and the Act of the Colorado Legislature of 1887 (Sess. Laws, p. 24) does not affect mines or mining companies.

MINING CORPORATIONS, DOMESTIC.

Any three or more persons are authorized to file their certificate of incorporation under the general Incorporation Act (G. S. § 237-365), for purposes of mining or construction of ditches or flumes; and to run tunnels. For fee on filing *see* p. 178.

The term of existence of such corporations cannot exceed twenty years. (G. S. § 235.)

Any such Company may issue stock in payment for mines, such stock to be treated as paid up stock. (G. S. § 251 and 321.)

No personal liability is imposed upon stockholders for debts, except to the extent of unpaid stock held by them. (G. S. § 247 and 258.) But in certain cases, trustees or officers may become liable for violation of the provisions of the corporation Act for failure to make and record an annual report (G. S. 252), and declaring fraudulent dividends. (G. S. § 253.

ARTICLES OF INCORPORATION; MINING COMPANY.

WHEREAS, *George F. Gardner, Charles D. Peck and Henry Derst*, of the County of *Hinsdale*, State of *Colorado*, have associated themselves together for purposes of incorporation under the General Incorporation Acts of the State of Colorado, they do therefore make, sign and acknowledge these Duplicate Certificates in writing, which when filed, shall constitute the Articles of Incorporation of *The Fiat Silver Mining Company*.

ARTICLE 1.—The name of said company shall be "*The Fiat Silver Mining Company*."

ARTICLE 2.—The objects for which said company is created are to acquire and operate mines of silver-bearing ore in said County of *Hinsdale*, and to do all things incident to the general object of mining.

ARTICLE 3.—The term of existence of said Company shall be twenty years.

ARTICLE 4.—The capital stock of said Company shall be One Million Dollars, divided into ten thousand shares of one hundred dollars each.

ARTICLE 5.—The number of Directors of said Company shall be three, and the names of those who shall manage the affairs of the Company for the first year of its existence are *George P. Gardner, Charles D. Peck and Henry Derst*.

ARTICLE 6.—The principal office of said Company shall be kept at *Lake City*, in said County, and the principal business of said Company shall be carried on in said County of *Hinsdale*.

ARTICLE 7.—The stock of said Company shall be non-assessable.

ARTICLE 8.—The Board of Directors shall have power to make such prudential By-Laws as they may deem proper for the management of the affairs of the Company, not inconsistent with the laws of this State, for the purpose of carrying on all kinds of business within the objects and purposes of such Company.

In witness whereof, the said incorporators have hereunto set their hands and seals this first day of January, A. D. 1887.

GEORGE P. GARDNER, [Seal.]
CHARLES D. PECK, [Seal.]
HENRY DERST. [Seal.]

STATE OF COLORADO }
County of *Hinsdale*, } ss.

I, *George W. Franklin*, a Notary Public in and for said County, do hereby certify that *George P. Gardner, Charles D. Peck and Henry Derst* who are personally known to me to be the same persons described in, and who executed the within Duplicate Articles of Incorporation, appeared before me this day and personally acknowledged that they signed, sealed and delivered the same as their free and voluntary act and deed.

Witness my hand and Notarial Seal this first day of January, A. D. 1887.

GEORGE W. FRANKLIN, Notary Public. [Seal.]

The first seven articles in the above form contain all the statutory requirements. Article 8 in regard to the by-laws, is necessary if it is intended that the directors instead of the stockholders shall make the by-laws. (G. S. § 245.)

One of said duplicates is to be filed with the Recorder of the proper county, and one with the Secretary of State, and if the business is to be carried on in more than one county, the word duplicate should not be used, as there

must be an original for each county as well as for the Secretary of State. The proper proof of corporate existence is by certified copy from the office of the Secretary of State. The Chapter concerning corporations provides for assessments upon shares, where by the charter the stock is made assessable, and the Statute requires that whether the stock shall be assessable or non-assessable shall be stated in the above Articles; and each certificate of stock "shall have plainly printed on the face thereof the word 'assessable' or 'non-assessable,' as the case may be."

Where it is desired to transact part of the business out of the State, the certificate should so state.

Form: ARTICLE 9—A part of the business of said Company shall be carried on in *Eckley*, County of *Luzerne*, Commonwealth of *Pennsylvania*, and the principal office of said Company out of the State shall be at said *Eckley*, at which office meetings of Directors may be held.

The number of Directors or Trustees must be not less than three, and not more than nine.

ORGANIZATION MEETING.

Record of first meeting of the Board of Directors of *The Flat Silver Mining Company*, at *Lake City*, Colorado, January 7, 1887.

At a meeting of the persons named in the articles of said Company, there being present *G. F. Gardner*, *Charles D. Peck* and *Henry Derst*:

On motion *George F. Gardner* was elected Chairman, and *Charles D. Peck*, Secretary *pro tem*.

On motion the articles of incorporation as filed in the office of the Secretary of State and in the office of the County Clerk of *Hinsdale* county, were accepted as the articles of incorporation, or charter of said company.

On ballot taken *George F. Gardner* was elected President of the Company. *Charles D. Peck* was elected Vice-President, *Henry Derst* was elected Treasurer, *William R. Swan* was elected Secretary, and *Benj. B. Lawrence* was elected Superintendent.

On motion the following By-Laws were adopted :

*BY-LAWS.

I—OFFICERS.

The officers of this Company shall consist of a President, Vice-President, Secretary, Treasurer and Superintendent, who shall be chosen by the Directors at their first meeting following the annual meeting of the Stockholders in each year. They shall be elected from the Board of Directors, except the Secretary and Superintendent, who may or may not be Directors. Said officers shall hold their respective offices until their successors are appointed and enter upon the duties of their offices. A majority of the Board of Directors must be residents of Colorado. Vacancies among the Directors may be filled at any meeting of the Board of Directors, by ballot.

II—DUTIES OF OFFICERS.

President.—It shall be the duty of the President to preside at all meetings of the Directors, and to sign all bonds, deeds, agreements or other instruments in writing, made or entered into by or on behalf of the corporation; to sign all certificates of stock, and all orders for money on the Treasurer, and in general, perform all acts incident to his office.

Vice-President.—It shall be the duty of the Vice-President to perform all such functions as belong to the office of the President, in the absence of the President.

Secretary.—The Secretary shall give due notice of all meetings of stockholders, and of the Board of Directors; shall prepare and keep proper books of record and of account for the business of the Company, and such other books as the Directors may prescribe. He shall countersign and register all certificates of stock, and other documents requiring the signature of the President, attaching the corporate seal of the Company to all instruments requiring seal, and perform all such other duties as are incident to his office. A suitable compensation, to be determined by the Directors, shall be allowed the Secretary for his services. He shall be the custodian of the corporate seal.

Treasurer.—The Treasurer shall be the custodian of the funds until the same be disposed of by order of the Board of Directors. He shall give bond satisfactory to the Board of Directors, for the faithful performance of his duties. No money shall be paid out by the Treasurer except on the order of the President or Superintendent, countersigned by the Secretary.

Superintendent.—The Superintendent shall have control of the working and developing of the Company's mining property; shall report to the Board of Directors for their approval, all con-

*NOTE.—The above By Laws will be found, in general, sufficient; but each By-Law should be reviewed and such changes made as may be needed to cover special plans of the incorporators.

templated work, and after such approval, shall have full power to contract said work. All expenses incurred by the Superintendent in the working and management of the Company's property shall be borne by the Company. A suitable compensation, to be determined by the Board of Directors, shall be allowed him for his services.

III—BOARD OF DIRECTORS.

The Board of Directors shall consist of three members, always including the President, Vice President and Treasurer. It shall be the duty of the Board to exercise a general supervision over the affairs of the Company; to receive and pass upon the reports of the Secretary, Treasurer and Superintendent; to audit all bills and accounts against the Company, and direct the Secretary in correspondence.

The Board of Directors shall cause its officers to make a full exhibit of their several departments and to prepare reports for submission to the annual meeting of stockholders.

The Board of Directors shall meet at such times as they shall from time to time determine, and a meeting of the Board may at any time be called by the President or any two members of the Board by causing personal notices to be served upon the Directors at least one day before the date of such proposed meeting. Two of the Directors shall constitute a quorum for the transaction of business. All directors and officers must be stockholders.

IV—STOCKHOLDERS' MEETINGS.

The first annual meeting of the Company shall be held at the office of the Company in Lake City, at ten o'clock A. M., on the second Tuesday in January, A. D. 1887, and on the same Tuesday of each succeeding year. If omitted, the Directors shall hold over until their successors are appointed. Special meetings may be called by the Board of Directors, or by one-tenth in amount of all the stock held. In addition to any published notice required by law, printed notice to each stockholder shall be mailed at least thirty days previous to each meeting (except adjourned meetings) and the object of the same stated. Stockholders may be represented by proxies, which must be exhibited for inspection to the meeting, before being allowed to vote.

V—CERTIFICATES OF SHARES.

The subscribers to the capital stock of this Company shall be entitled to certificates of their shares, duly signed by the President and countersigned by the Secretary. The certificates of stock shall be numbered and registered as they are issued. Transfers of stock shall only be made on the books of the Company, either in person or by attorney, and the possession of stock shall not be regarded as evidence of ownership of the same, unless it appears upon the stock books of the Company that said certificate was issued or duly transferred to the holder of the same.

VI.—DEBTS.

No debt shall be contracted against the Company except by order of the Board of Directors.

VII.—DIVIDENDS.

Dividends shall be made not in excess of the net earnings of the Company at the close of every fiscal year, which shall be on the thirty-first day of December of every year; or oftener as the Board of Directors may see fit.

VIII.—CORPORATE SEAL.

This Company adopts as its corporate seal, the device described as follows: A pick and shovel crossed, surrounded by the name of the Company.

IX.—AMENDMENTS.

These By-Laws may be changed, amended or revoked at any time, by a two-thirds vote of the Board of Directors.

The Charter and By-Laws being adopted, and the officers elected, the organization of the corporation is complete, and the minutes proceed to note business as it may be transacted.

Reports and Certificates Required.—After payment of the last installment of capital stock the President and a majority of the Board of Directors are privileged to file a certificate in the office of the Secretary of State, as follows:

CERTIFICATE OF STOCK PAID IN.

STATE OF COLORADO, }
County of Hinsdale, } ss.

The undersigned, *Geo. F. Gardner*, President, and *Charles D. Peck*, and *Henry Derst*, Directors, constituting a majority of the Directors of *The Flat Silver Mining Company*, do hereby certify, in accordance with Section 248 of the General Statutes of said State that the amount of the Capital Stock of said Company, as fixed and limited by their Articles of Incorporation, is \$1,000,000, and that the whole amount of said stock has been paid in. Witness our hands this 4th day of *February*, A. D. 1887.

GEO. F. GARDNER, President.
CHARLES D. PECK, Director.
HENRY DERST, Director.

STATE OF COLORADO, }
County of Hinsdale, } ss.

Geo. F. Gardner, Charles D. Peck and Henry Derst being duly sworn, say that they are the officers named in the foregoing certificate, and constitute a majority of the Board of Directors of said Company; that they have heard said Certificate read and know the contents thereof, and that the matters and things therein stated are correct and true.

GEO. F. GARDNER,
CHARLES D. PECK,
HENRY DERST.

Sworn and subscribed before me this 4th day of *February*,
A. D. 1887. GEO. W. FRANKLIN, N. P. [Seal.]

A copy of said certificate is also to be filed in the Recorder's office of each county where business is done.

The filing of such certificate is not compulsory, but if filed relieves from any personal liability in case of failure to file the *annual* certificate found in the next form.

The *annual* certificate is required from every company in form substantially as follows:

ANNUAL CERTIFICATE.

STATE OF COLORADO, }
County of Hinsdale, } ss.

KNOW ALL MEN BY THESE PRESENTS, That the amount of the Capital Stock of *The Fiat Silver Mining Company*, a corporation organized under the laws of said State, is \$1,000,000, of which amount \$650,000 has been paid in. The amount of the existing debts is \$40,000. (*Insert schedule of items.*) Witness the Corporate name and Seal of said Company, at the hand of *Geo. F. Gardner* its President, this *first* day of *February*, A. D. 1887.

[SEAL.] THE FIAT SILVER MINING COMPANY,
Geo. F. Gardner, President.

STATE OF COLORADO, }
County of Hinsdale, } ss.

George F. Gardner being duly sworn saith, that he is *President* of the above-named Company; that he has heard read the foregoing Certificate and knows the contents thereof, and that the matters and things therein stated are correct and true.

GEO. F. GARDNER.

Sworn and subscribed before me this 1st day of *February* A. D. 1887. GEORGE W. FRANKLIN, N. P. [SEAL.]

Such report should be filed within 60 days from the first day of January. G. S. § 252.

In either form, where the stock has been paid up by purchase of the mine, the certificate must so state.—G. S. § 251.

The Secretary may verify it instead of the President, but the President alone, it seems, can sign it. It is filed in the Recorder's office only. Neglect of filing imposes personal liability on the Directors.

ARTICLES OF ASSOCIATION; DITCH COMPANY.

Preamble—Same as page 169.

ARTICLE 1.—The name of said Company shall be "*The Deluge Ditch Company.*"

ARTICLE 2.—The objects for which said Company is created are to construct a Ditch, and keep and maintain the same from the stream known as the Roaring Fork of the Grand, tapping such stream at a point about one-quarter mile above the Jones Ranch, and about one hundred yards below Eagle Cliff; and fifty feet N. E. from lone pine tree blazed D. D., the line of said ditch running thence (give course and distance by survey if possible, so as to describe "the line of said ditch as near as may be"). The water of said ditch to be used and sold for placer mining.

ARTICLE 7.—The stock of said Company shall be assessable, upon majority vote at stockholders' meeting, as required by law.

ARTICLES 3, 4, 5, 6, 8 and 9 and acknowledgment, same form as on page 170.

The stream tapped, head of ditch, line of ditch and intended use of water must always be stated.

Any surplus water they are compelled to keep for sale, at rates fixed by County Commissioners.

FOREIGN CORPORATIONS.

By Sections 260-263 of the General Statutes in force since 1877, corporations organized or chartered outside the State of Colorado are placed under exact and peculiar restrictions.

They are required before they are permitted "to do any business in this State," to make and file duplicate certificates, signed by the President and Secretary, duly acknowledged, of which the following is a correct form:

STATE OF NEW YORK, }
County of New York } ss.

KNOW ALL MEN BY THESE PRESENTS, That the *Remonetized Silver Mining Company*, a corporation organized under the laws of said State, doth hereby designate that the "principal place where the business of such corporation shall be carried on in the State of Colorado," is *Silver Cliff*, in the County of *Custer*, State of Colorado, and that *Jesse White*, residing at said principal place of business, is the authorized agent of said Company, upon whom process may be served. Witness the Corporate Name and Seal of said Company, and the signatures of its President and Secretary, this *first* day of *July*, A. D. 1888.

REMONETIZED SILVER MINING COMPANY,
[Seal.] *Russell Sage*, President.
Cyrus W. Field, Secretary.

STATE OF NEW YORK, }
County of New York } ss.

I, *Herbert E. Dickson* (195 Broadway), Commissioner of Deeds of the State of Colorado, duly commissioned and sworn, in and for said County, do hereby certify that *Russell Sage*, President, and *Cyrus W. Field*, Secretary of the within named corporation, who are personally known to me to be such President and Secretary of said Corporation, personally appeared before me this day, and acknowledged the within Instrument (in duplicate) to be their free and voluntary act and deed, and the free and voluntary act and deed of said Corporation. Witness my hand and official Seal this 1st day of *July*, A. D. 1888. *Herbert E. Dickson*,
[SEAL.] Commissioner for Colorado.

One copy of the above instrument must be filed with the Secretary of State, and one in the office of the Recorder of the proper county.

G. S. Section 260, requiring the above certificates has been construed as mandatory, and it is intimated that the acquisition of real estate is doing business within the meaning of the section; but it does not prevent the company resisting a trespass by maintaining suit at law.—*Ulley v. Clark Gardner Co.*, 4 M. R. 39; *In re Comstock*, 3 Saw., 223.

But where the matter has been at first neglected and yet complied with before the suing out of a *Quo Warranto*, or other inquisition, or at least before adverse rights have accrued, the final compliance would doubtless be considered as having a retroactive effect in a manner analogous to the case of naturalization. See p. 167.

The same section G. S. § 260, declares that all foreign corporations shall be "subject to all the liabilities, restrictions and duties which are or may be imposed upon corporations of like character organized under the General Laws of this State and shall have no other or greater powers;" forbids the purchase or holding of real estate by foreign corporations except as provided for in such Act and prohibits any mortgage or other preference to foreign to the exclusion of domestic creditors, postponing any such mortgage until all domestic debts at the date of its record shall have been paid.

Foreign corporations are further required (G. S. § 261) to file a copy of their charter in the office of the Secretary of the State of Colorado, or if "incorporated by certificate under any general incorporation law a copy of such certificate and of such general incorporation law duly certified and authorized by the proper authority of such foreign State, Kingdom or Territory." These papers are not required to be filed with the County Recorder.

The "proper authority" alluded to would be in general the Secretary of the State where organized.

Upon failure to comply with the requirements of either section every officer, agent and stockholder is made personally responsible, on all contracts made while the company remains in default.—(G. S. § 262.)

Filing Fee.—By Act of April 4, 1887, (Sess. Laws p. 406) each foreign (the same as domestic) corporation, upon filing its Articles as above mentioned in the office of the Secretary of State, is required to pay a fee or tax for the use of the State of \$10 for the first \$100,000 of its capital stock and ten cents for each additional \$1,000 of stock.

Domestic Charter Preferable.—The provisions of the above sections, together with the fact that a foreign

corporation is liable to attachment as a non-resident in any case where a defendant, and where a plaintiff must file special security for costs, renders a domestic organization preferable in most cases.

Domestic Organization by Non-Residents.—

The Corporation Law of Colorado does not in terms require the organizing associates to be citizens or residents; but a domestic organization composed entirely or substantially of non-residents would be practically a foreign corporation, and its validity might be seriously questioned. In any case, however, where the acknowledgment is made out of the State it should be taken before a Commissioner of Deeds or before a Clerk of a Court of Record (not a Deputy Clerk), because when taken before a Notary Public the acknowledgment is *invariably* defective, if not void.

INDIAN RESERVATION.

An Indian reservation is not a part of the public domain open to exploration or occupation, and a valid mining location cannot be made upon it. An attempted location made before the extinguishment of the Indian title must yield to one made after its purchase. *Kendall v. San Juan M. Co.* 9 Colo. 349.

But in *Noonan v. Caledonia M. Co.* 121 U. S. 393 the Supreme Court of the United States have ruled that on the cession of the reservation the claim becomes valid.

A claim within the Reservation cannot be patented. Copp M. L. 253. And the location of scrip thereon is void. *U. S. v. Carpenter*, 111 U. S. 347.

POLICE REGULATIONS UPON ORE BUYERS.

By Act of February 7, 1877, found in section 2506 of the General Statutes, every company or individual "engaged in the business of milling, sampling, concentrating, reducing, shipping or purchasing ores in the State of Colorado," is required to keep a book in which shall be entered at the time of the delivery of each lot of ore—

First—The name of the party on whose behalf such ore is delivered, as stated.

Second—The name of the teamster, packer or other persons actually delivering such ore, and the name of the owner of the team or packtrain delivering such ore.

Third—The weight or amount of every such lot of ore.

Fourth—The name and location of the mine or claim from which it shall be stated that the same has been mined or procured.

Fifth—The date of delivery of any and all lots or parcels of ore."

The succeeding sections provide that parties claiming an interest in ore delivered shall have the privilege of examining such books and for penalties in case of failure to keep the same. And that neglect to make proper inquiries from parties bringing ore to the mill shall not excuse failure to comply. They also attempt to make the purchaser criminally liable for ore bought from mines held "contrary to any penal law now in force," which was intended to include cases where possession had been taken by violence, contrary to the provisions of the jumping act. G. S. § 2414.

PENAL PROVISIONS.

Fraudulent Gold Dust Scales.—G. S. § 886.—If any person shall knowingly have, keep or use any false or fraudulent scales or weights for weighing gold or gold dust or any other article or commodity, every such person so offending shall, on conviction, be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months.—Nov. 5, 1861.

Fraudulent Mill Scales.—G. S. § 2511.—Any person, association or corporation, or the agent of any person, association or corporation engaged in the business of milling, sampling, concentrating, reducing, shipping or purchasing ores, as aforesaid, who shall keep or use any false or fraudulent scales or weights for weighing ore, or who shall keep or use any false or fraudulent assay scales or weights for ascertaining the assay value of ore, knowing them to be false, every person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding one thousand (1000) dollars, nor less than one hundred (100) dollars, or imprisonment not more than one year, or both, at the discretion of the Court.—*Feb. 7, 1877.*

Debased Gold Dust.—Sections 779 and 780 make it penal to knowingly have or pass debased gold dust. In *People v. Page*, 1 *Ida.*, 102, the defendant was convicted on indictment for having in possession instruments for manufacturing bogus gold dust. In *People v. Sloper*, 1 *Ida.*, 158, and *People v. Page*, *Id.*, 189, the offense of uttering such material is discussed.

Fraudulent Undervaluation of Ores.—G. S. § 2512.—Any person, corporation or association, or the agent of any person, corporation or association engaged in the milling, sampling, concentrating, reducing, shipping or purchasing of ores in this State, who shall, in any manner, knowingly alter or change the true value of any ores delivered to him or them so as to deprive the seller of the result of the correct value of the same, or who shall substitute other ores for that delivered to him or them, or who shall issue any bill of sale or certificate of purchase that does not exactly and truthfully state the actual weight, assay value and total amount paid for any lot or lots of ore purchased, or who, by any secret understanding or agreement with another shall issue a bill of sale or certificate of purchase that does not truthfully and correctly set forth the weight, assay value, and total amount paid for any lot or lots of ore purchased by him or them, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding one thousand (1000) dollars, nor less than one hundred (100) dollars, or imprisonment not more than one year, or both, at the discretion of the Court.—*Feb. 7, 1877.*

There is also a section (887) against a mill refusing to turn over the proceeds of gold quartz under the old system of custom work.

Salting Ore.—G. S. § 897.—That every person who shall mingle or cause to be mingled with any sample of gold or silver bearing ore, any valuable metal or substance whatever that will in-

crease or in any way change the value of said ore, with the intent to deceive, cheat or defraud any person or persons, shall, on conviction thereof, be punished by a fine not less than five hundred nor more than one thousand dollars, or by confinement in the penitentiary for a term not less than one nor more than fourteen years, or by both such fine and imprisonment.—*Feb. 12, 1874.*

At the April Term, 1873, of the District Court of Clear Creek County, a conviction was had before Hon. James B. Belford, Judge, for salting ore (mixing silver filings with the mill sample) under an indictment for obtaining money under false pretenses, which offense is now, however, specially provided for in the above Section 897.

Ore Stealing by Lessees.—G. S. § 2513 —If any person, lessee, licensee or employee in or about any mine in this State, shall break and sever, with intent to steal the ore or mineral from any mine, lode, ledge or deposit in this State, or shall take, remove or conceal the ore or mineral from any mine, lode, ledge or deposit, with intent to defraud the owner or owners, lessee or licensee of any such mine, lode, ledge or deposit, such offender shall be deemed guilty of felony, and on conviction shall be punished as for grand larceny.—*Feb. 7, 1877.*

This section does not apply to ore stealing by strangers, or to what at common law would be considered larceny, in any case where no privity exists between the parties. Its constitutionality was doubted under certain technical clauses of the constitution, but it has been declared valid in *Clare v. People*, 9 Colo. 122.

Trespass, not Larceny.—The taking of ore by severing it from the realty, accompanied by its immediate asportation, can in no case be considered larceny.—*Peo. v. Williams*, 4 M. R. 185; *State v. Berryman*, *Id.* 199; *State v. Burt*, *Id.* 190.

This distinction, which is supposed to be technical, is in some of the cases referred to as unsubstantial and indefensible, although its force as decided law is not questioned; on the contrary, it is a distinction necessary to check the

constant tendency to seek a criminal remedy where the civil remedy is ample, and in almost all cases of such severance a felonious intent is wholly wanting.

Removing Location Marks.—G. S. § 210.—That if any person or persons shall wilfully and maliciously deface, remove, pull down, injure or destroy any location stake, side post, corner-post, land mark or monument, or any other legal land boundary monument in this State, designating, or intending to designate, the location, boundary or name of any mining claim, lode or vein of mineral, or the name of the discoverer, or date of discovery thereof, the person or persons so offending shall be guilty of a misdemeanor, and on conviction thereof shall be fined not more than one thousand dollars, or imprisoned not more than one year, at the discretion of the Court; *Provided*, That this Act shall not apply to abandoned property.—*Feb. 9, 1876.*

Malicious Mischief.—An act of similar nature concerning the removing of shaft-coverings, timbering, etc., is found in the Session Laws of 1885, p. 276.

Jumping Claims by Stealth or Violence.—G. S. § 211.—In all cases when two or more persons shall associate themselves together for the purpose of obtaining the possession of any lode, gulch or placer claim, then in the actual possession of another, by force and violence or threats of violence, or by stealth, and shall proceed to carry out such purpose by making threats against the party or parties in possession, or who shall enter upon such lode or mining claim for the purpose aforesaid, or who shall enter upon or into any lode, gulch, placer claim, quartz mill, or other mining property, or not being upon such property, but within hearing of the same, shall make any threats, or make use of any language, signs or gestures calculated to intimidate any person or persons at work on said property from continuing to work thereon or therein, or to intimidate others from engaging to work thereon or therein, every such person so offending shall, on conviction thereof, be fined in a sum not to exceed two hundred and fifty dollars, and be imprisoned in the County Jail not less than thirty days nor more than six months, such fine to be discharged either by payment or by confinement in said jail until such fine is discharged at the rate of two dollars and fifty cents per day. On trials under this section, proof of a common purpose of two or more persons to obtain possession of property as aforesaid, or to intimidate laborers as above set forth, accompanied or followed by any of the acts above specified by any of them, shall be sufficient evidence to convict any one committing such acts, although the parties may not be associated together at the time of committing the same. *Feb. 13, 1874.*

The above section is intended to prevent what has commonly been termed mine "jumping"—which word is commonly met with in some of the old statutes as well as in the district rules, and occasionally in law reports.—*Arnold v. Baker*, 7 M. R. 111; *Murphy v. Cobb*, 5 M. R. 530. As a penal statute it is awkwardly framed, and the substantial remedy is by a section passed at the same time, by which *possession is restored* to the party forcibly dispossessed. See page 195.

Homicide Ensuing from Mine-Jumping is made murder in the first degree by Act of 1874, amended in 1876, (G. S. § 2415) but this section is probably qualified by the Act of 1883, defining murder, (G. S. § 709.)

Coal Mines.—There are also special Acts, G. S. §§ 191-196, Acts of 1885 p. 131, 1887 p. 222, regulating coal mines, specially providing for inspection of the same and guarding against spontaneous combustion, gob-fires, open pits, fire damp and other dangers.

Ventilation, Children, Strikes.—The Constitution, Art. 16, § 2, requires the passage of laws securing safety escapes and ventilation in mines, but there have been no statutes yet passed upon these subjects except the Colliery Acts above mentioned. The employment of children under fourteen years of age is forbidden by Act of 1887, p. 76. There are no Acts especially referring to strikes, negligence, of employers or attempting to regulate working of mines (other than coal mines) under penalties.

EJECTMENT.

Pleadings.—Under the Code the distinct names of the various actions are abolished, but the distinctions con-

tinue the same in fact, and the term ejectment has its specific application the same as formerly.

Section 267 of the Code requires a concise statement in the complaint of the nature of the title, when possessory.

Supporting Adverse Claim.—It is the action always brought in support of an adverse claim. *Becker v. Pugh*, 9 Colo., 589. In such suit it is immaterial which party is in actual possession at the time when the action was brought. *Id.* And no proof of an ouster is required. *Golden Fleece Co. v. Cable Co.*, 1 M. R., 120.

The object of the suit is to determine the right of possession, and the result is to decide which party is entitled to a patent from the United States. The Government being thus an interested party, each side must prove its own case affirmatively, and to either recover or successfully defend must show a valid location. *Bay State Co. v. Brown*, 21 Fed., 167; *Jackson v. Roby*, 109 U. S., 440; *McGinnis v. Egbert*, 8 Colo., 41; *Rosenthal v. Ives*, 12 Pac., 991. Neither party is entitled to a verdict upon mere proof of prior possession alone—as is the rule in a contest where individuals only are interested. (*Sears v. Taylor*, 6 M. R., 318.) Although possession may become incidentally a material issue in the case. See ADVERSE CLAIM.

Possession, How Proved.—A person who has purchased a mining claim, which had been properly located and marked out upon the ground, and who is personally or by his agents, upon the claim, working and developing it, and keeping up the boundary stakes and marks thereof, is not merely in the constructive possession of such claim by virtue of mining laws, but is in the actual possession of the whole claim; such possession is a *possessio pedis*, extending to the boundary lines of the claim.—*North Noonday Co. v. Orient Co.*, 9 M. R., 531.

Actual occupation of a part of the claim under papers calling for the entire tract by metes and bounds, gives constructive possession of the entire tract.—*Harris v. Equator Co.*, 12 M. R., 178; *Attwood v. Fricot*, 2 M. R., 305; *Hess v. Winder*, 12 M. R., 217.

Possession is a question of law; the witness must testify to facts, and it is for the Court to say whether these facts amount to possession.—*Thistle v. Frostberg, Co.*, 10 Md., 129. But the uniform holding of the United States Court, at Denver, has been that the question as to possession may be asked directly, leaving it to the cross-examination to bring out whether the facts stated amount to possession, and this is the more sensible practice.

Presumption of Location.—Where a plaintiff has been in actual possession of his claim for the full period of the Statute of Limitations (five years) a presumption may be indulged as against a wrong doer at least, that his location was regularly made, without putting him to proof of its successive steps. *Harris v. Equator Co.*, *supra*.

Second Trial.—After the first trial the losing party may pay the costs before the first day of the next term and take a second trial.—Code, § 272. And if the second trial result in favor of the party who lost the first case a third trial will be granted on like terms.

FORCIBLE ENTRY.

The acts concerning forcible entry and unlawful detainer (1835, p. 224; 1887, p. 270) apply to possessory as well as other claims, but those acts are so involved, so abrupt and cruel in their attempt to substitute haste for deliberation, that they result in driving to appeals and in the end to more lengthy and costly litigation than where ejectment

is resorted to in the first instance. Especially is this the case where the action is commenced before a justice of the peace before whom proceedings are so vexatious, oppressive, and attended with so much heavier costs than such as accrue in Courts of Record, that it is rarely advisable to seek the remedy for any wrong, in any form of action before them.

ATTACHMENT. TRESPASS.

In 1872 an Act was passed, repeated in Sec. 119 of the Code of 1877, allowing mines and the ore extracted from the same to be attached in cases of alleged trespass; that is to say, where the same property was claimed by adverse parties. Its abuse, enabling any party who was able to furnish bonds, to cripple the means of the opposite party, led to its repeal in 1879.

Damages in trespass may now be recovered in the same action in which the title is tried, or by separate action. Section 272 of the present Code purports to forbid allowance of improvements as offset to damages.

MEASURE OF DAMAGES.

For Ore Taken.—The true measure of damages depends upon circumstances of aggravation, ranging from the profits of working to the gross value of the ore after breaking from the stope.—*Empire Co. v. Bonanza Co.*, 67 Cal., 406; *In re United Merthyr Co.*, 10 M. R. 153; *Ege v. Kille*, Id. 212.

In a case of trespass by extracting ore, decided by the Supreme Court of Nevada, all the authorities are collected and the rule laid down that the cost of mining should be

deducted from the value of the ore in all cases, where neither fraud nor culpable negligence constituted any element of the case.—*Waters v. Stevenson*, 10 *M. R.*, 240; 29 *Am. Rep.*, 293. And the decisions *at nisi prius* in Colorado, as far as the writer's knowledge extends, have adopted the same rule, the arbitrary clause in the Code above cited being in such context and so worded that it does not prevent deduction of cost of getting the ore, and covers no case except an action for mesne profits, strictly so-called.

It is further debatable how far a legislature may interfere with the question of the measure of damages, which is strictly a judicial matter.

In Miscellaneous Cases.—For the measure of damages on refusal to accept deed, see *Gilpin M. Co. v. Drake*, 8 *Colo.*, 586. On breach of contract to lease: *Chambers v. Brown*, 28 *N. W. Rep.*, 561. In cases of negligence, *Moody v. McDonald*, 2 *M. R.*, 187. On tunnel contract: *Monroe v. Northern Pac. Co. Id.*, 652. Against lessor for mining the ground leased: *Chamberlain v. Collinson*, 9 *M. R.*, 37.

ACTIONS BASED ON NEGLIGENCE, ACCIDENTS, ETC.

The same rule governs the liabilities of owners, lessees and contractors in case of accident to employes, as controls in other cases where the relation of master and servant exists and negligence is the foundation of the action.

McAndrews v. Burns, 39 *N. J. L.*, 117.

Perry v. Ricketts, 55 *Ill.*, 234; 9 *M. R.*, 687.

Hall v. Johnson, 3 *H. and C.*, 589; 9 *M. R.*, 684.

Quiney Co. v. Hood, 77 *Ill.*, 69; 12 *M. R.*, 148.

Strahlendorf v. Rosenthal, 30 *Wisc.*, 675; 10 *M. R.* 676.

The mine owner must look to the proper support of his gangways and to the timbering and to the machinery above. *Quincy Co. v. Hood*, 12 *M. R.* 148; *Strahlendorf v. Rosenthal*, 10 *M. R.* 676; *Ardesco Co. v. Gilson*, 10 *M. R.* 669.

He is liable for accidents resulting from experimenting with new and untried explosives. *Smith v. Oxford Co.*, 2 *M. R.* 208.

He is responsible when the accident can be traced directly to his own fault or the fault of his partner. *Melors v. Shaw*, 9 *M. R.* 678. And in many cases where traceable to the fault of the Superintendent or foreman.

Contributory Negligence. Co-Employee.—But the mine owner, as a general rule, is not liable when the accident was in whole or in part attributable to the negligence of the party injured or to the carelessness of a fellow workman not occupying a directing or superior position to the party injured. *Kerem v. Prov. Co.* 70 *Cal.* 392; *Ardesco Co. v. Gilson*, 10 *M. R.* 669; *Berea Co. v. Kraft*, *Id.*, 16; *Trihay v. Brooklyn Co.*, 11 *Pac.*, 612.

REPLEVIN.

Ore Taken Under Claim of Title.—Where a party is in possession of a mine under a *bona fide* claim of title, the party out of possession cannot maintain replevin, or an action under the Code in the nature of replevin, for the ore taken from the same; because the trial of the right of property in the ore in such case would necessarily involve the trial of the title to real estate. *Brown v. Caldwell*, 12 *M. R.* 674; *Mather v. Trinity Church*, 14 *M. R.*; *Harlan v. Harlan*, 15 *Pa. St.* 507; *Anderson v. Harper*, 31 *Ill.* 436; *Page v. Fowler*, 28 *Cal.* 605; *Smith v. Idaho Q. M. Co.* 11 *Pac.* 878.

Defendant cannot re-replevy ore.—*Morris v. DeWitt*, 12 *M. R.* 680.

INJUNCTION.

At some stage of its progress a contest over a working mine is almost sure to suggest this sort of relief. It is true that the prayer for an injunction is always to a certain extent addressed to the discretion of the Court, but the exercise of this discretion does not imply the total absence of principles applicable to this class of cases.

The ground for the application of injunctive relief is that the property may be preserved pending litigation for the ultimate use of the rightful owner and may not in the meanwhile be destroyed by a trespasser. But the pendency of litigation is not of itself sufficient; the complainant must go farther and show that his case is based upon substantial facts, and that there is a probability of a decision in his favor when the cause is tried on its merits. As he asks relief in advance of the trial, it is only just that he make it appear that the trial when had will show that he was in fact entitled to this protection; and especially so when a decree of this sort wrongfully issued may be and often is as great an injury to the defendant as the conversion of some of the ore is to a rightful complainant.—*Capner v. Flemington Co.*, 7 M. R. 263; *Clavering v. Clavering*, 14 M. R. —; *Irwin v. Davidson*, 7 M. R. 237.

Bond.—The fact of a bond being filed for the relief of the defendant, if injured, is a protection to him only in theory. A bond is seldom available to the ultimate vindication of the right; it is no lien; the measure of damages is vexed and unsettled, and the security is rarely accessible by the time judgment is obtained.

Laches.—Further, to entitle him to this relief the complainant must not have been guilty of unreasonable

delay nor have allowed the defendant to have proceeded without objection to expend money in good faith upon the property.

Parrott v. Palmer, 3 M. & K., 632.

Real del Monte Co., v. Pond Co. 7 M. R. 452.

Emma Mine case, Id. 493.

Field v. Beaumont, Id. 257.

Mammoth Co.'s Appeal, Id. 460.

The solvency or insolvency of the defendant, as well as many other circumstances applicable to particular cases, may be taken into account, but is not a controlling consideration when the case is otherwise clear.

Lockwood v. Lunsford, 7 M. R. 532.

Hamilton v. Ely, 4 Gill., 34.

Sierra Co. v. Sears, 7 M. R. 549.

Moore v. Ferrel, Id., 281.

Irwin v. Davidson, Id., 237.

Burnett v. Whiteside, Id., 407.

Title in Issue.—In cases where a determination of the legal title is necessary to finally determine the rights of the parties the complaint should be framed to procure an issue of that sort; or a previous suit must be pending which will result in determining the title; or a separate action must be brought for such purpose. In the United States Courts where law and equity distinctions are strictly maintained, separate issues must always be made. If no suit be pending to try title the court may order such suit to be brought as a condition precedent to the granting of the writ.

Merced Co. v. Fremont, 7 M. R. 313.

U. S. v. Parrott, Id., 335.

Grey v. Northumberland, Id., 250.

Old Telegraph Co. v. Central Co., Id., 555.

Hall v. Equator Co., U. S. C. Ct., Denver—

and such has been the common practice in this last cited Court.

Preservation of the Property.—The gist of the case and the foundation of equity jurisdiction is to save the property from destruction, pending the litigation.

Thomas v. Oakley, 7 M. R. 254.

Bracken v. Preston Id., 267.

Merced Co. v. Fremont, Id., 313.

Moore v. Ferrell, 7 M. R., 281.

Hess v. Winder, 34 Cal., 270.

West Point Co. v. Reymert, 7 M. R., 528.

U. S. v. Gear, 3 How., 132; 14 M. R.

Chapman v. Toy Long, 1 M. R., 497.

Case Sufficient to Warrant Injunction.—To reduce the matter to terms it may be stated as a proposition, supported by the weight of authority, that a temporary injunction, pending suit to try title, will issue as of right, to restrain the working of a mine, upon a case which shows, after hearing on bill, answer and testimony:

1. That the complainant has the legal title or the elder and better possessory title: or at least such a showing of title as would, if proved as stated in the bill, support the verdict of a jury in an action of ejectment; and where the defense suggested in the answer does not show a recovery by plaintiff impossible as a proposition of law; and the affidavits or depositions being considered the weight of evidence is with complainant upon the question of fact; and that the defendant is in possession taking out ore (which of itself is a destruction of the estate) in such considerable quantity as to threaten irreparable injury.

Henshaw v. Clark, 14 Cal., 160; 14 M. R., —

Hicks v. Compton, 18 Cal., 206.

More v. Massini, 7 M. R., 455.

Magnet Co. v. Page, 7 M. R., 510.

Lockwood v. Lunsford. Id., 532.

Anderson v. Harvey, Id., 291.

Erhardt v. Boaro, 113 U. S., 537.

2. That the bill was brought without needless delay, and that the defendant has not been allowed or encouraged to expend large sums of money upon the property, which it was in the power of the complainant to prevent.

Ernest v. Vivien, 8 M. R. 205.

Parrott v. Palmer, and other cases above cited.

And as matters more particularly addressed to the discretion of the court are the insolvency of defendant, threats of violence and danger of personal collisions, the fact of reckless mining without regard to the permanent preservation of the mine, etc.

The above propositions are made upon the supposition of an application for injunction after notice, appearance and answer.

But courts will not enjoin in cases charged with doubt or where, on the plaintiff's showing, final relief would not be granted. *International Co. v. Miles*, 22 Fed., 659; *Gold Tel. Co. v. Commercial Tel. Co.*, Id. 838.

As a rule in equity pleadings where the defendant denies the allegations of the bill in terms, the writ will not issue; but where the bill is supported by affidavits, and is filed to restrain irreparable mischief by the working of a mine, and the bill, answer and supporting affidavits being considered together the case appears as stated—for the preservation of the subject matter of controversy and as a rule limited in its application to mining cases and others standing on analogous facts, where the substance and not merely the use is in jeopardy, the answer is not to be taken as conclusive, if there remain to the complainant such a showing as is above stated.

Notice.—The usual period of notice to defendant is six days, but the Statute merely requires a notice "in proportion to the urgency of the case." (Code, § 148.) And

where the defendant prays further time to answer, it is usual, on slight showing, to grant a restraining order or preliminary writ.

In many States the writ of injunction issues at once upon complainant's showing, and the issue comes before the court upon motion to dissolve. In this State a reasonable notice is required to be given before the writ can issue which allows the defendant opportunity to file his answer; so that the argument is heard usually upon the original motion for an injunction and not upon the motion to dissolve.

FORM OF INJUNCTION NOTICE.

STATE OF COLORADO, }
County of *Lake*, } ss.

In the District Court of said County.

John McCombe, Plaintiff, v. Frank M. Taylor and John Harvey, Defendants.—Injunction.

To the above named defendants:

You and each of you will take notice that the said Plaintiff will apply to Hon. *Luther M. Goddard*, Judge of said Court, at the Court House in *Red Cliff*, County of *Eagle*, in said State, at the hour of 2 o'clock *P. M.*, on the 8th day of *July*, A. D. 1888, or as soon thereafter as Counsel can be heard, when and where you may attend as you see fit—for a Writ of Injunction to restrain and enjoin you and each of you, your agents, attorneys, lessees, sub-lessees, employees, and all persons under or in privity with you, from working, mining, extracting or carrying away ore from the *Fair Deceiver* Lode Mining Claim, situate on *Carbonate Hill*, in *California* Mining District, in said County of *Lake*, and for other relief; and that Plaintiff will support the application by the Complaint, Affidavits, Maps and Documentary Evidence.

Leadville, July 2, 1888.

Frank M. Owers,
Attorney for Plaintiff.

Ex parte writs to enjoin the working of a mine are forbidden by Statute.—Code § 148. This provision has been evaded by praying for a writ to forbid removal or sale of the ore but the granting of such a writ without notice would be in violation of the spirit of the law.

Practice, on Hearing.—The notice having been served the complainant presents his bill or complaint to the Court or Judge at chambers. The Section of the Code allowing a hearing before filing the bill having been greatly abused, was purposely omitted in the revision of 1887. If the Complaint has not been filed or a copy served with the notice, it is usual to allow defendant a reasonable time to answer.

A demurrer is rarely interposed to a bill stating fully the complainant's case. And if interposed and not sustained, the defendant is not in a position to ask for time to answer over.

The complainant with his bill, and the defendant with his answer, may file affidavits in support of the bill and answer respectively, and this is usually advisable.

The answer being presented, and denying fully the merits of the bill, the court may either hear the case on bill and answer with their supporting affidavits, or refer the matter to a master or referee to take depositions.

Verification.—Both bill and answer should be verified—and the answer must be sworn to even where the oath of defendant is waived by the proper clause to that effect in the bill. In the latter case the oath has not, indeed, the technical effect of a sworn answer, but the answer has its proper effect as a plea and the further effect of an affidavit of the defendant.

Mandatory Writ.—Section 159 of the Code provides that where possession of a mine is taken by violence or during intervals of labor, a mandatory writ restoring possession shall issue. This Act, passed originally in 1874, has been found effective to accomplish the object intended and the forcible dispossession of parties working a mine is now almost unheard of.

A hearing under this Act goes only to the matter of the unlawful dispossession of the plaintiff and the writ leaves the parties to their legal rights on all other questions as though no such writ had issued."

An injunction mandatory in effect and implying affirmative acts from the defendant or the surrender of possession of premises is an unusual sort of relief, to be granted with great caution, but is not without precedent, even as the result of an interlocutory decree, and without the aid of any such statute.—*Cole Co. v. Virginia Co.*, 7 M. R., 516.

The object of the Act is to allow the Court or Judge to grant speedy and practical relief, whenever a party, in peaceable possession, has been ousted by force or fraud, without regard to any question, except the fact and manner of dispossession, and for this object it has been held valid and not unconstitutional by all, or nearly all, the Judges at Nisi Prius, and has remedied one of the greatest evils ever complained of in the mining counties.

The Federal Court of this district, shortly after the admission of the State, declined to accept jurisdiction under this Act. But under the principle laid down in the late case of *Aspen M. Co. v. Rucker*, 28 Fed., 222, as to U. S. Courts exercising equity powers where conferred by State Statute, it is likely that its jurisdiction in a case with proper parties would not be at this time questioned.

The practice under the Statute is peculiar. As soon as the complaint is filed the court is directed *ipso facto* to grant a temporary writ restraining the working of the claim. Such a direction is, of course, void as it directs judgment without day in court or trial. But the other provisions of the Section are not hurt by this isolated provision; they refer merely to the division of time between the parties for taking testimony and for a speedy adjudica-

tion and forbid the use of such a writ in favor of a party who procured his own possession by violation of the spirit of the Act.

In framing bills under this Act it is not advisable to pray any relief further than the preliminary writ and the restoration of possession.

At least five days' notice of application must be given: the form on page 194 is sufficient to the words "Writ of Injunction," after which conclude as follows:

Having the force and effect of a writ of Restitution, restoring plaintiff to the possession of the *Edwily* Lode Mining Claim, situate in *Grand Island* Mining District, County of *Boulder*, and for a Temporary Injunction restraining the working of said claim in accordance with the terms of Section 159 of the Code, and that plaintiff will support the application by the complaint and affidavits.

Denver, July 2, 1888.

Wm. M. Maguire,
Attorney for Plaintiff.

County Courts are forbidden by Statute to interfere with the enjoyment, working or possession of a mining claim. G. S. § 487.

INSPECTION AND SURVEY.

Under Section 364, of the Code, either party after suit is commenced, is allowed the privilege of a survey and inspection of the premises, held by the adverse party, after demand and refusal, and after certain awkward and useless notices and affidavits, the section cited being probably the most complete instance of involved and turgid composition ever found on a statute book.

After analysis of its clauses and throwing out such portions as must be discarded in order to give grammatical sense to the paragraph, it seems that the procedure is as follows:

1. A demand in writing is made for permission to survey and inspect some certain portion of the premises.

2. The opposite party has three days in which to consent to or refuse this demand.

3. A refusal being had and the three days elapsed the party presents to the Court or Judge a petition under oath in which he must set forth his interest in the premises and "the reason why it is necessary" that he should have such survey and inspection; stating the demand made and the refusal and praying an order for survey and inspection.

4. The Court or Judge then fixes a time and place for hearing this petition and orders notice thereof to be served at least three days before the hearing.

5. On the day set the petition is argued and may be aided or resisted by affidavits.

6. The Court or Judge, if satisfied that the "facts stated in the petition are true," makes the order.

Three inspectors are allowed to accompany the Surveyors; an interference with them is made contempt and the costs are taxed against the losing party.

This right of inspection always existed, in courts of equity at least, and has been frequently exercised.

Ennor v. Barwell, 12 M. R. 101.

Lonsdale v. Curwen, 7 Id. 693.

Att'y-Gen. v. Chambers, 12 Beav. 159.

Thornborough v. Savage Co. 7 M. R. 667.

Dugdale v. Robertson, — M. R. —.

Lewis v. Marsh. 8 Id. 14.

Bennitt v. Whitehouse, Id. 17.

Stockbridge Co. v. Cone Works, 6 Id. 317.

Section 2413 of the General Statutes on the same subject, exists on the statute books unrepealed, but the Code section being of later date controls its operation.

There is also a special provision for survey in Drainage cases.—G. S. § 2420.

STATUTE OF LIMITATIONS.

Section 2332, of the United States Statutes, expressly recognizes possession of a mining claim during the period fixed by the State Act as sufficient to establish a right thereto.—420 *Mining Co. v. Bullion Co.*, 1 M. R. 114.

Prior to the act of Feb. 13, 1874 (G. S. § 2186-2189), which prescribes the period of five years as the limitation to actions of ejectment for mining claims and other classes of real estate, no express limitation existed.

The continuous working of a mine, or even its working during successive seasons with intervening seasons during which the mine is left idle according to the custom of the country, is as complete an adverse possession as could be gained by agricultural operations or other acts of possession.—*Stephenson v. Wilson*, 13 M. R. 408; *Wilson v. Henry*, 1 M. R. 152; 157; 420 *M. Co. v. Bullion Co.*, 11 M. R. 608.

In the case of *Harris v. Equator Co.* cited p. 186, it was intimated in the opinion of the Court, *Hallett, J.*, that where a party had been in possession of a mining claim for the period of the Statute of Limitations, such fact raised a presumption, at least against a wrong doer, that he held under a valid location, without proof of the various acts of location, and such must from the nature of things be the ultimate decision of all courts upon this point.

The Statute of Limitations does not begin to run while the title is in the United States, except as between parties both of whom claim by possessory title only.—*King v. Thomas*, 12 Pac. 865.

The limitation to the actions of replevin and trespass is six years.—(G. S. § 2163.)

The limitation to prosecutions for misdemeanors under the penal provisions, is eighteen months, and for felonies three years.—(G. S. § 975.)

Adverse possession of water for the statutory period gives title.—*Cox v. Clough*, 70 Cal. 345.

To make adverse possession available there must be: 1. The occupation or use of the land, and 2, a claim and color of title. The Colorado Supreme Court has ruled that a party following a patented vein beyond its side lines has not sufficient color of title to maintain such defense.—*Lebanon Co. v. Rogers*, 8 Colo. 34.

COMMISSIONER OF MINES.

By Art. 16, Sec. 1 of the Constitution, the above entitled office is established. Chapter 15 of the General Laws, passed in 1877, defined its duties and provided for the appointment of a person to fill the office, but by the refusal of the Legislature to make any provision for salary or expenses, the chapter referred to became a dead letter, was repealed at the session of 1881, and has not been re-enacted.

ASSAYS, ASSAY OFFICES.

An assay is the test of the value of a specimen or quantity of ore by the extraction of the amount of silver, gold or other metal, contained in a minute fraction, which amount is supposed to be proportionate to the whole amount found in the quantity from which the fraction was obtained. Supposing the assay to be correct, its importance in determining the quantity of metal depends on the size of the lot from which it was obtained, and the manner in which such lot was selected. What are called specimen assays are of no value whatever, further than to show the contents of the identical specimen from which made, but are often used to deceive persons ignorant in such matters.

While the assay shows only the contents of that portion of ore that has been assayed, its importance lies in its acceptance as indicating the contents of other ore of which the portion assayed was a "sample."

The intent of an assay is to show the true value of the ore and if it is so taken as not to show such value, proof of assays otherwise taken may be given in evidence. *Phipps v. Hully*, 18 Nev. 133; 15 M. R. —.

Between ore-buyer and ore-seller ore is usually sampled by the former under supervision of the latter; this sample (pulverised) is divided into portions—one for the buyer, one for the seller, and one to be kept for reference in case of difference between the other two. The third division is often omitted. After division, each portion is in itself a sample. Both buyer and seller have a control assay (assay in duplicate) made of their respective samples, the assay of the seller being also a control assay in regard to the assay of the buyer.

The results of carefully made assays of a sample should not differ more than one per cent., nor should samples of

the same ore differ more than two per cent. In case of excessive variation in assays, one or both samples are assayed by a third party, as referee for accuracy of assay. In case of excessive variation of samples and failure of third sample to conform to either of the first two, ore is usually resampled.

Under the Territorial Statutes were created certain official Assay Offices. They amounted to nothing more than to confer a public title on a party carrying on a private trade and were abolished by the act creating the office of Commissioner of Mines. Assays and analyses that may be called official can now only be had from the State School of Mines, at Golden.—(G. S. § 3113.)

SCHOOL OF MINES.

The General Assembly may provide that the Sciences of Mining and Metallurgy be taught in one or more of the institutions of learning under the patronage of the State.—*Const. Art.* 16. § 4.

Under the above provision, the "School of Mines," at Golden, being such an institution (*Const. Art.* 9, § 5) is specially incorporated under Chapter 93 of the General Statutes.

An annual tax of one-fifth of one mill on all taxable property is assessed for its support.—G. S. § 3108. Its declared object is to furnish "such instruction as is provided for in like technical schools of a high grade," and it is authorized to confer degrees.—G. S. § 3102.

NOTE.—Its present Faculty consists of *Regis Chauvenet*, President, Chemistry; *Arthur Lakes*, Geology; *Magnus C. Ihlseng*, Engineering; *Paul Meyer*, Mathematics; *Geo. C. Tilden*, Assaying; *Benj. B. Suttler, Ph. D.*, Metallurgy.

The course includes four years of three terms each. A one year's course in assaying (without a degree) is also given.

LAND DISTRICTS.

There are ten Land Districts in Colorado with offices at Denver, Central City, Lake City, Leadville, Pueblo, Del Norte, Durango, Gunnison, Glenwood Springs and Lamar.

At each Land Office is a Register and a Receiver all the offices acting in connection with the office of the Surveyor General at Denver.

The subdivisions known as "Mineral Districts" have been abolished. The "Mining Districts" retain their use as local designations in Land Office practice the same as in conveyancing.

The boundaries of the several Land Districts are as follows:

Denver Land District.—Beginning at the east boundary line of the State, at a point on the second correction line south, thence west along said second correction line, to the line between ranges 70 and 71 west; thence north along said range line to the dividing line between Boulder and Larimer Counties, being the south line of township 4 N.; thence west to the top of the Front range, and following the continental divide and Park range to a point on line between ranges 83 and 84 west; thence north to the north boundary of the State; thence east and south, following the State boundary line to the place of beginning.

It includes Arapahoe, Weld, Logan and Washington counties and parts of Larimer, Elbert, Boulder, Jefferson and Douglas.

Central City Land District.—Following the west boundary line of the Denver Land District, from a point where the range line (83-84) crosses the divide on the boundary line between Grand and Routt Counties, along the Park range, Continental divide, Front range, the dividing line between Larimer and Boulder Counties, and the line between ranges 70 and 71 west, to where the latter intersects the second correction line; thence west to the dividing line between Jefferson and Park Counties; thence north, following the county line to the first correction line south, thence west along said correction line to the S. W. corner of township 5 south, range 82 west; thence north along the line separating ranges 82 and 83 west to the first correction north, thence west to the S. W. corner of township 5 north, range 83 west, thence north along the line separating ranges 83 and 84 west, to the place of beginning.

It includes Gilpin, Clear Creek and Grand counties, and parts of Summit, Eagle, Jefferson and Routt.

Leadville Land District.—Bounded on the north by the Central City Land District, on the east by the west boundary of Jefferson county to the S. W. corner of township 10 south, range 71 west. Thence east to the northeast corner of township 11 south, range 71 west. Thence south to the S. E. corner of township 15 south, range 71 west. Thence west to the N. W. corner of township 51 north, range 11 east of N. M. P. M. Thence south to the N. E. corner of township 49 north, range 10 east. Thence west to the N. W. corner of township 49 north, range 10 east. Thence south to the S. W. corner of township 49 north, range 10 east. Thence west to the middle of township 49 north, range 6 east on 12th corr. line north. Thence north through the middle of said township to its north boundary. Thence west to the S. W. corner of township 59 north, range 6 east. Thence north to the N. W. corner of said township. Thence west to the middle of township 51 north, range 5 east. Thence north to the third correction line south. Thence west to the middle of township 15 south, range 81 west. Thence north through the middle of townships 15, 14 and 13 south in range 81 west, to the north boundary of township 13 south, range 81 west. Thence west to the S. W. corner of township 12 south, range 81 west. Thence north to the divide, where Chaffee and Pitkin counties join. Thence westerly along the divide and south boundary of Pitkin county to where the divide intersects the south boundary of township 11 south, range 86 west. Thence east to the S. E. corner of township 11 south, range 83 west. Thence north along the line separating ranges 82 and 83 west, to the intersection with the 1st correction line south.

It includes Park, Lake and Chaffee counties, and parts of Fremont, Jefferson, El Paso, Gunnison, Pitkin and Eagle.

Del Norte Land District.—Beginning at the N. E. corner of township 48 north, range 8 east N. M. P. M.; thence south to the S. E. corner of said township; thence east to the N. E. corner of township 47 north, range 10 east; thence south to the S. E. corner of said township; thence east to the N. E. corner of township 46 north, range 11 east; thence south to the S. E. corner of said township; thence east to the N. E. corner of township 45 north, range 12 east; thence south to the S. W. corner of township 27 south, range 73 west of 6th P. M.; thence east to the N. E. corner of township 28 south, range 70 west; thence south between ranges 69 and 70 west to the south boundary of the State; thence west to where the range line between ranges 2 and 3 east of N. M. P. M. intersects the State boundary; thence north along said range line to the intersection of the 9th correction line north; thence north-west along the San Juan mountains' ridge to the S. W. corner of township 39 north, range 1 east; thence north along the N. M.

P. M. to the intersection with the 11th correction line north; thence east to the S. W. corner of township 45 north, range 3 east; thence north to the N. W. corner of said township; thence east to the S. W. corner of township 46 north, range 4 east; thence north to the N. W. corner of said township; thence east to the S. W. corner of township 47 north, range 6 east; thence north to the N. W. corner of said township; thence east to the S. W. corner of township 48 north, range 7 east; thence north to the N. W. corner of said township; thence east to the place of beginning.

It includes Conejos county, and parts of Rio Grande, Saguache, Costilla, Archuleta, Huerfano, Custer and Fremont.

Lake City Land District.—Beginning at a point on the west boundary of the State where the line between townships 46 and 47 north intersects said boundary in range 20 west of N. M. P. M., thence east to the N. E. corner of township 46 north, range 2 west, thence south to the S. W. corner of township 45 north, range 1 west; thence east to the N. M. P. M.; thence south along said P. M. to the intersection with the San Juan mountains; thence northwesterly along the ridge of said mountains to the S. W. corner of township 41 north, range 6 west; thence north to the N. E. corner of township 42 north, range 7 west; thence west to the western boundary of the State; thence north along said State boundary to the point of beginning.

It includes parts of Hinsdale, San Juan, Ouray, Gunnison, Montrose, Saguache and San Miguel counties.

Durango Land District.—Is bounded on the north by Lake City Land District, on the east by the Del Norte Land District, and on the south and west by the State boundaries.

It includes La Plata and Dolores counties, parts of San Miguel, San Juan, Hinsdale, Rio Grande and Archuleta counties.

Garfield Land District.—Is bounded on the west and north by the State boundaries, on the east by the Denver, Central City and Leadville Land Districts, to the S. E. corner of township 11 south, range 83 west; thence west to the S. W. corner of township 11 south, range 96 west; thence west to corr. line south; thence east to S. E. corner of township 10 south, range 97 west; thence north to the N. E. corner of township 9 south, range 97 west; thence west to the boundary of the State.

It includes Garfield county and parts of Eagle, Pitkin, Gunnison, Routt, Delta, Larimer and Mesa.

Gunnison Land District.—Bounded on the north by Garfield and Leadville Land Districts, on the east by the Leadville and Del Norte Land Districts, on the south by the Lake City Land District, on the west by the west boundary of the State.

It includes parts of Gunnison, Mesa, Delta, Montrose, Ouray and Saguache counties.

Bent Land District—Bounded on the north by the 2d correction line south, on the east and south by the boundaries of the State, and on the west by the meridian line separating ranges 52 and 53 west of the 6th P. M.

It takes in parts of Las Animas, Bent and Elbert Counties.

Pueblo Land District.—Bounded on the north by the Denver Land District, on the west by the Leadville and Del Norte Land Districts, on the south by the State boundary, on the east by the Bent Land District.

It includes Pueblo County, and parts of El Paso, Bent, Las Animas, Custer and Fremont Counties.

For changes in Land Districts since the above "form" was set (Feb. 1888) see APPENDIX.

LAND OFFICE RULES, REVISED OCTOBER 31, 1881.

(With Amendments to January 1, 1888.)

ISSUED BY THE GENERAL LAND OFFICE.

Mineral Lands Open to Exploration, Occupation and Purchase.—1.—It will be perceived that by the foregoing* provisions of law the mineral lands in the public domain, surveyed or unsurveyed, are open to exploration, occupation and purchase by all citizens of the United States and all those who have declared their intention to become such.

Status of Lode-Claims Located Prior to May 10, 1872.—2.—By an examination of the several sections of the Revised Statutes it will be seen that the *status* of lode claims located *previous* to the 10th May, 1872, is not changed with regard to their *extent along the lode or width of surface*.

*NOTE.—In the Land Office Circular these instructions are preceded by a copy of the Congressional Law.

Side Veins, Additional Grant of.—3.—Mining rights acquired under such previous locations are, however, enlarged by said Revised Statutes in the following respect, viz: The locators of all such previously taken veins or lodes, their heirs and assigns, so long as they comply with the laws of Congress and with the State, Territorial or local regulations not in conflict therewith, governing mining claims, are invested with the exclusive possessory right of all the surface included within the lines of their locations, and of all veins, lodes or ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such locations at the surface, it being expressly provided, however, that the right of possession to such outside parts of said veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as aforesaid, through the end lines of their locations so continued in their own direction that such planes will intersect such exterior parts of such veins, lodes or ledges; no right being granted, however, to the claimant of such outside portion of a vein or ledge to enter upon the surface location of another claimant.

Idem.—4.—It is to be distinctly understood, however, that the law limits the possessory right to veins, lodes or ledges, *other* than the one named in the original location, to such as were not *adversely claimed on May 10, 1872*, and that where such other vein or ledge was so adversely claimed at that date, the right of the party so adversely claiming is in no way impaired by the provisions of the Revised Statutes.

Annual Labor on Old Locations.—5.—In order to hold the possessory title to a mining claim located prior to May 10, 1872, and for which a patent has not been issued, the law requires that *ten dollars* shall be expended annually in labor or improvements on each claim of *one hundred feet* on the course of the vein or lode until a patent shall have been issued therefor; but where a number of such claims are held in common upon the same vein or lode, the aggregate expenditure that would be necessary to hold all the claims, at the rate of ten dollars per hundred feet, may be made upon any one claim; a failure to comply with this requirement in any one year, subjecting the claim upon which such failure occurred to relocation by other parties, the same as if no previous location thereof had ever been made, unless the claimants under the original location shall have resumed work thereon after such failure and before such relocation. The first annual expenditure upon claims of this class should have been performed subsequent to May 10, 1872, and prior to January 1, 1875. From and after January 1, 1875, the required amount must be expended *annually* until patent issues. By decision of the honorable Secretary of the Interior, dated March 4, 1879, such annual expenditures are not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

Forfeiture.—6.—Upon the failure of any one of several co-owners of a vein, lode or ledge, which has not been entered, to contribute his proportion of the expenditures necessary to hold the claim or claims so held in ownership in common, the co-owners who have performed the labor, or made the improvements, as required by said Revised Statutes, may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days; and if upon the expiration of ninety days after such notice in writing, or upon the expiration of one hundred and eighty days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his co-owners, who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision, the sworn statement of the publisher as to the facts of publication, giving dates and a printed copy of the notice published should be furnished, and the claimant must swear that the delinquent co-owner failed to contribute his proper proportion within the period fixed by the Statute.

Patents for Lodes or Veins heretofore issued.—7.—Rights under patents for veins or lodes heretofore granted under previous legislation of Congress, are enlarged by the Revised Statutes so as to invest the patentee, his heirs or assigns, with title to all veins, lodes or ledges, throughout their entire depth, the top or apex of which lies within the end and side boundary lines of his claim on the surface, as patented, extended downward vertically, although such veins, lodes or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of the claim at the surface. The right of possession to such outside parts of such veins or ledges to be confined to such portions thereof, as lie between vertical planes drawn downward through the end-lines of the claims at the surface, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges, it being expressly provided, however, that all veins, lodes or ledges, the top or apex of which lies inside such surface locations, *other than the one named in the patent, which were adversely claimed on the 10th May, 1872*, are excluded from such conveyance by patent.

8.—Applications for Patents for Mining Claims pending at the date of the Act of May 10, 1872, may be prosecuted to final decision in the General Land Office, and where no adverse rights are affected thereby, patents will be issued in pursuance of the provisions of the Revised Statutes.

Manner of Locating Claims on Veins or Lodes after May 10, 1872.—9.—From and after the 10th May, 1872, any person who

is a citizen of the United States or who has declared his intention to become a citizen, may locate, record and hold a mining claim of *fifteen hundred linear feet* along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of *fifteen hundred feet*, but in no event can a location of a vein or lode made subsequent to May 10, 1872, exceed fifteen hundred feet along the course thereof, whatever may be the number of persons composing the association.

Width, Surface Ground.—10.—With regard to the extent of surface-ground adjoining a vein or lode, and claimed for the convenient working thereof, the Revised Statutes provide that the lateral extent of locations of veins or lodes made after May 10, 1872, shall in no case *exceed three hundred feet on each side of the middle of the vein at the surface*, and that no such surface rights shall be limited by any mining regulations to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th May, 1872, may render such limitation necessary; the end-lines of such claims to be in all cases parallel to each other. Said lateral measurements cannot extend beyond three hundred feet on *either* side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet cannot be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on the one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration *where* the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

Size of Claim.—11.—By the foregoing it will be perceived that no lode-claim located after the 10th May, 1872, can exceed a parallelogram fifteen hundred feet in length by six hundred feet in width, but whether surface ground of that width can be taken depends upon the local regulations or State or Territorial laws in force in the several mining districts; and that *no* such local regulations or State or Territorial laws shall limit a vein or lode claim to less than fifteen hundred feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than fifty feet in width, unless adverse claims existing on the 10th day of May, 1872, render such lateral limitation necessary.

District Rules.—12.—It is provided by the Revised Statutes that the miners of each district may make rules and regulations not in conflict with the laws of the United States, or of the State or Territory in which such districts are respectively situated, governing the location, manner of recording, and amount of work necessary to hold possession of a claim. They likewise require that the location shall be so distinctly marked on the ground that its boundaries may be readily traced. This is a very

important matter, and locators cannot exercise too much care in defining their locations at the outset, inasmuch as the law requires that all records of mining locations made subsequent to May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a *description of the claim or claims* located by reference to some natural object or permanent monument, as will identify the claim.

No Record Before Discovery.—13.—The Statutes provide that no lode claim shall be recorded until after the discovery of a vein or lode within the limits of the claim located, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of *bona fide* prospectors before sufficient work has been done to determine whether a vein or lode really exists.

Location. Notice.—14.—The claimant should therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft, or run a tunnel or drift, to a sufficient depth therein to discover and develop a mineral-bearing vein, lode or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface. His location notice should give the course and distance as nearly as practicable from the discovery shaft on the claim, to some permanent well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines or roads, prominent buttes, hills &c, which may be in the immediate vicinity, and which will serve to perpetuate and fix the *locus* of the claim, and render it susceptible of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

Adjoining Claims. Staking.—15.—In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery; it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of fifteen hundred feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case how many feet are claimed upon each side of such discovery point.

Record—16.—Within a reasonable time, say twenty days after the location shall have been marked on the ground, or

such time as is allowed by the local laws, notice thereof, accurately describing the claim in manner aforesaid, should be filed for record with the proper recorder of the district, who will thereupon issue the usual certificate of location.

Annual Labor on New Locations.—17.—In order to hold the possessory right to a location made since May 10, 1872, not less than one hundred dollars' worth of labor must be performed, or improvements made thereon annually until entry shall have been made. Under the provisions of the act of Congress, approved January 22, 1880, the first annual expenditure becomes due and must be performed during the calendar year succeeding that in which the location was made. Expenditure made or labor performed prior to the first day of January succeeding the date of location will not be considered as a part of, or applied upon, the first annual expenditure required by law. Failure to make the expenditure or perform the labor required will subject the claim to relocation by any other party having the necessary qualifications, unless the original locator, his heirs, assigns or legal representatives, have resumed work thereon after such failure and before such relocation.

18.—The Expenditures Required upon Mining Claims may be made from the surface or in running a tunnel for the development of such claims, the Act of February 11, 1875, providing that where a person or company has, or may, run a tunnel for the purpose of developing a lode or lodes owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same.

19.—The Importance of attending to these Details in the matter of location, labor and expenditure will be the more readily perceived when it is understood that a failure to give the subject proper attention may invalidate the claim.

TUNNELS.

Tunnel Rights.—20.—Section 2323 provides that where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins or lodes on the line of said tunnel.

Line of Tunnel Protected.—21.—The effect of this is simply to give the proprietors of a mining tunnel run in good faith the possessory right to fifteen hundred feet of any blind lodes cut, discovered or intersected by such tunnel, which were not previously known to exist, within three thousand feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the *line thereof* and within said distance of three thousand feet, unless such lodes appear upon the surface or were previously known to exist.

22.—The term “face,” as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the three thousand feet are to be counted, upon which prospecting is prohibited as aforesaid.

Tunnel Notice and Stakes.—23.—To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location, by erecting a substantial post, board or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel; the height and width thereof, and the course and distance from such face or point of commencement to some permanent well known object in the vicinity by which to fix and determine the *locus* in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the three thousand feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to the specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

Record of Tunnel.—24.—At the time of posting notice and marking out the lines of the tunnel as aforesaid, a full and correct copy of such notice of location defining the tunnel claim, must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed; and that it is *bona fide* their intention to prosecute work on the tunnel so located and described, with reasonable diligence, for the development of a vein or lode, or for the discovery of mines, or both, as the case may be.

This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

25.—By a compliance with the foregoing much needless difficulty will be avoided, and the way for the adjustment of legal rights acquired in virtue of said section 2323 will be made much more easy and certain.

Tunnel not Worked.—26.—This office will take particular care that no improper advantage is taken of this provision of law by parties making or professing to make tunnel locations, ostensibly for the purposes named in the statute, but really for the purpose of monopolizing the lands lying in front of their tunnels to the detriment of the mining interests and to the exclusion of *bona fide* prospectors or miners, but will hold such tunnel claimants to a strict compliance with the terms of the statutes; and a *reasonable diligence* on their part in prosecuting the work is one of the essential conditions of their implied contract. Negligence or want of due diligence will be construed as working a forfeiture of their right to all undiscovered veins on the line of such tunnel.

APPLICATION FOR PATENT.

Manner of Proceeding to Obtain Government Title to Vein or Lode Claims.—27.—By section 2325 authority is given for granting titles for mines by patent from the government to any person, association, or corporation, having the necessary qualifications as to citizenship and holding the right of possession to a claim in compliance with law.

Idem. Survey.—28.—The claimant is required in the first place to have a correct survey of his claim made under authority of the Surveyor General of the State or Territory in which the claim lies; such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. Four plats and one copy of the original field notes, in each case, will be prepared by the Surveyor General; one plat and the original field notes to be retained in the office of the Surveyor General, one copy of the plat to be given the claimant for posting upon the claim, one plat and a copy of the field notes to be given the claimant for filing with the proper register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the Surveyor General to the register of the proper land district to be retained on his files for future reference.

Posting Plat on the Claim.—29.—The claimant is then required to post a copy of the plat of such survey in a conspicuous place upon the claim, together with notice of his intention to ap-

ply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, mine or lode; the mining district and county; whether the location is of record, and, if so, where the record may be found; the number of feet claimed along the vein and the presumed direction thereof; the number of feet claimed on the lode in each direction from the point of discovery, or other well-defined place on the claim; the name or names of adjoining claimants on the same or other lodes; or, if none adjoin, the names of the nearest claims, &c.

Land Office Posting.—30.—After posting the said plat and notice upon the premises, the claimant will file with the proper register and receiver a copy of such plat, and the field notes of survey of the claim; accompanied by the affidavit of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting; a copy of the *notice* so posted to be attached to, and form a part of, said affidavit.

Statement of Claim.—31.—Attached to the field notes so filed, must be the sworn statement of the claimant that he has the possessory right to the premises therein described, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district, State or Territory in which the claim lies, and with the mining laws of Congress; such sworn statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent.

Abstract of Title.—32.—This affidavit should be supported by appropriate evidence from the mining recorder's office as to his possessory right, as follows, viz: Where he claims to be a locator, a full, true, and correct copy of such location should be furnished as the same appears upon the mining records, such copy to be attested by the seal of the recorder, or if he has no seal, then he should make oath to the same being correct, as shown by his records; where the applicant claims as a locator in company with others who have since conveyed their interests in the lode to him, a copy of the original record of location should be filed, together with an abstract of title from the proper recorder, under seal or oath as aforesaid, tracing the co-locator's possessory rights in the claim to such applicant for patent; where the applicant claims only as a purchaser for valuable consideration, a copy of the location record must be filed, under seal or upon oath as aforesaid, with an abstract of title certified as above by the proper recorder, tracing the right of possession by a continuous chain of conveyances from the original locators to the applicant, also certifying that no conveyances affecting the title to the claim in question appear of record in his office other than those set forth in the accompanying abstract.

The date of said recorder's certificate should cover the date of application for patent in the land office.

Lost Records.—33.—In the event of the mining records in any case having been destroyed by fire or otherwise lost, affidavit of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the affidavit of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase or other evidence which may be in the claimants possession, and tend to establish his claim, should be filed.

Publisher's Contract.—34.—Upon the receipt of these papers the register will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of sixty days, in a newspaper published nearest to the claim; and will post a copy of such notice in his office for the same period. In all cases sixty days must intervene between the first and the last insertion of the notice in such newspaper. When the notice is published in a *weekly* newspaper ten consecutive insertions are necessary; when in a *daily* newspaper the notice must appear in each issue for the required period.

Notice Must be Full.—35.—The notices so published and posted must be as full and complete as possible, and embrace all the *data* given in the notice posted upon the claim.

36.—Too much care cannot be exercised in the preparation of these notices, inasmuch as upon their accuracy and completeness will depend, in a great measure, the regularity and validity of the whole proceedings.

Surveyor General's Certificate of \$500. Improvements.—37.—The claimant, either at the time of filing these papers with the register, or at any time during the sixty days' publication, is required to file a certificate of the Surveyor General that not less than five hundred dollars' worth of labor has been expended or improvements made upon the claim by the applicant or his grantors; that the plat filed by the claimant is correct; that the field notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporated into a patent, serve to fully identify the premises, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the *locus* thereof.

Idem—38.—It will be the more convenient way to have this certificate indorsed by the Surveyor General, both upon the plat and field notes of survey filed by the claimant as aforesaid.

Proof of Plat Remaining Posted.—39.—After the sixty days' period of newspaper publication has expired the claimant will file his affidavit, showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said sixty days' publication, giving the dates.

Entry. Statement of Sums Paid.—40.—Upon the filing of this affidavit the register will, if no adverse claim was filed in his office during the sixty (60) days from date of first publication, permit the claimant to pay for the land according to the area given in the plat and field notes of survey aforesaid, at the rate of five dollars for each acre and five dollars for each fractional part of an acre, the receiver issuing the usual duplicate receipt therefor. The claimant will also make a sworn statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the register and receiver of the land office; after which the whole matter will be forwarded to the Commissioner of the General Land Office and a patent issued thereon if found regular.

Proof of Posting in Land Office.—41.—In sending up the papers in the case the register must not omit certifying to the fact that the notice was posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued.

42.—The consecutive series of numbers of mineral entries must be continued, whether the same are of lode or placer claims.

Series of Numbers.—43.—The Surveyor General must continue to designate all surveyed mineral claims as heretofore by a progressive series of numbers, beginning with lot No. 37 in each township; the claim to be so designated at date of filing the plat, field notes, etc., in addition to the local designation of the claim; it being required in all cases that the plat and field notes of the survey of the claim must, in addition to the reference to permanent objects in the neighborhood, describe the *locus* of the claim with reference to the lines of public surveys by a line connecting a corner of the claim with the nearest public corner of the United States surveys, unless such claim be on unsurveyed lands at a remote distance from such public corner, in which latter case the reference by course and distance to permanent objects in the neighborhood will be a sufficient designation by which to fix the *locus* until the public surveys shall have been closed upon its boundaries.

ADVERSE CLAIMS.

44.—Section 2326 provides for adverse claims, fixes the time within which they shall be filed to have legal effect, and prescribes the manner of their adjustment.

Sixty Day Period. Requisites.—45. — Said section requires that the adverse claim shall be filed during the period of publication of notice when published in a daily newspaper, and when published in a weekly, during the period of sixty (60) days from date of first publication; that it must be on the oath of the adverse claimant; and that it must show the "*nature*," the "*boundaries*," and the "*extent*" of the adverse claim.

46.—In order that this section of law may be properly carried into effect, the following is communicated for the information of all concerned:

60 Days.—47.—An adverse mining claim must be filed with the register of the same land office with whom the application for patent was filed, or in his absence with the receiver, and within the sixty days' period of newspaper publication of notice.

Verification.—48.—The adverse notice must be duly sworn to by the person or persons making the same before an officer authorized to administer oaths * or before the register or receiver; it will fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator; if the former, a certified copy of the original location, the original conveyance, a duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished or if the transaction was a mere verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the affidavit of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly certified copy of the location from the office of the proper recorder.

Plat.—49.—In order that the "*boundaries*" and "*extent*" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict. This plat must be made from an actual survey by a United States deputy surveyor, who will officially certify thereon to its correctness; and in addition there must be attached to such plat of survey a certificate or sworn statement by the surveyor as to the approximate value of the labor performed or improvements made upon the claim by the adverse party or his predecessors in interest, and the plat must indicate the position of any shafts, tunnels or other improvements, if any such exist, upon the claim of the party opposing the application, and by which party said improvements were made.

Notice of Adverse.—50. — Upon the foregoing being filed within the sixty days as aforesaid, the register, or in his absence

After the * the original rule read "within the Land District"—but see Act of April 26, 1882, post p. —.

the receiver, will give notice in writing to *both parties* to the contest that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within thirty days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that should such adverse claimant fail to do so, his adverse claim will be considered waived, and the application for patent be allowed to proceed upon its merits.

Stays Proceedings.—51.—When an adverse claim is filed as aforesaid, the register or receiver will indorse upon the same the precise date of filing, and preserve a record of the date of notifications issued thereon : and thereafter all proceedings on the application for patent will be suspended, with the exception of the completion of the publication and posting of notices and plat, and the filing of the necessary proof thereof, until the controversy shall have been adjudicated in court, or the adverse claim waived or withdrawn.

52.—The proceedings after rendition of judgment by the court in such case are so clearly defined by the act itself as to render it unnecessary to enlarge thereon in this place.

PLACERS.

Application for Patent on Placer Claims.—53.—The proceedings to obtain patents for claims usually called placers, including all forms of deposit, are similar to the proceedings prescribed for obtaining patents for vein or lode claims ; but where said placer claim shall be upon surveyed lands, and conform to legal subdivisions, no further survey or plat will be required, and all placer mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys and no such location shall include more than twenty acres for each individual claimant ; but where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands. But where such claims are located previous to the public surveys, and do not conform to legal subdivisions, survey, plat, and entry thereof may be made according to the boundaries thereof, provided the location is in all respects legal.

Idem. Price. 54.—The proceedings for obtaining patents for veins or lodes having already been fully given, it will not be necessary to repeat them here ; it being thought that careful attention thereto by applicants and the local officers will enable them to act understandingly in the matter and make such slight modifications in the notice, or otherwise, as may be necessary in view of the different nature of the two classes of claims, placer claims being fixed, however, at two dollars and fifty cents per acre, or fractional part of an acre.

10 Acre Lots.—55.—By section 2330, authority is given for the subdivision of forty-acre legal subdivisions into *ten acre* lots, which is intended for the greater convenience of miners in segregating their claims both from one another and from intervening agricultural lands.

No Survey in Such Case.—56.—It is held, therefore, that under a proper construction of the law these ten-acre lots in mining districts should be considered and dealt with, to all intents and purposes, as legal subdivisions, and that an applicant having a legal claim which conforms to one or more of these ten acre lots, either adjoining or cornering, may make entry thereof, after the usual proceedings, without further survey or plat.

Mode of Entry of Such Lots.—57.—In cases of this kind, however, the notice given of the application must be very specific and accurate in description, and as the forty-acre tracts may be subdivided into ten-acre lots, either in the form of squares of ten by ten chains, or of parallelograms five by twenty chains, so long as the lines are parallel and at right angles with the lines of the public surveys, it will be necessary that the notice and application state specifically what ten-acre lots are sought to be patented, in addition to the other *data* required in the notice.

Description.—58.—Where the ten acre sub-division is in the form of a square, it may be described, for instance, as the "S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$," or, if in the form of a parallelogram as aforesaid, it may be described as the "W. $\frac{1}{2}$ of the W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ (or the N. $\frac{1}{2}$ of the S. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$ of the S. E.) of section ———, township ———, range ———, as the case may be; but, in addition to this description of the land, the notice must give all the other *data* that is required in a mineral application, by which parties may be put on inquiry as to the premises sought to be patented. The proof submitted with applications for claims of this kind must show clearly the character and the extent of the improvements upon the premises. Inasmuch as the Surveyor General has no duty to perform in connection with the entry of a Placer Claim of legal subdivisions, the proof of improvements must show their value to be not less than *five hundred dollars*, and that they were made by the applicant for patent or his grantors.

Lode in Placer.—59.—Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement; and the vein or lode must be surveyed and marked upon the plat; the field notes and plat giving the area of the lode claim or claims and the area of the placer separately. If veins or lodes lying within a placer location are owned by other parties, the fact should be distinctly stated in the application for patent, and in all the notices. It should be remembered

that an application which omits to include an application for a known vein or lode therein, must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the affidavit of claimant and one or more witnesses.

60.—When an adverse claim is filed to a placer application, the proceedings are the same as in the case of vein or lode claims, already described.

QUANTITY OF PLACER GROUND SUBJECT TO LOCATION.

Quantity of Placer Ground Subject to Location.—61.—By section 2330 it is declared that no location of a placer claim made after July 9, 1870, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys.

Conformation to Public Surveys — 62.—Section 2331 provides that all placer mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public surveys and the sub-divisions of such surveys, and no such locations shall include more than twenty acres for each individual claimant.

Limit to Size of Location.—63.—The foregoing provisions of law are construed to mean that after the 9th day of July, 1870, no location of a placer claim can be made to exceed one hundred and sixty acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location made by an individual can exceed twenty acres, and no location made by an association of individuals can exceed one hundred and sixty acres, which location of one hundred and sixty acres cannot be made by a less number than eight *bona fide* locators; and no local laws or mining regulations can restrict a placer location to less than twenty acres, although the locator is not compelled to take so much.

How Located — 64.—The regulations hereinbefore given as to the manner of marking locations on the ground, and placing the same on record, must be observed in the case of placer locations, so far as the same are applicable; the law requiring, however, that where placer claims are upon *surveyed* public lands the locations must hereafter be made to conform to legal sub-divisions thereof as near as practicable.

Proof of Possession.—65.—With regard to the proofs necessary to establish the possessory right to a placer claim, section 2332 provides that "where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limita-

tions for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim."

Idem. Lost Records.—66.—This provision of law will greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

Possession Without Record Title.—67.—When an applicant desires to make his proof of possessory right in accordance with this provision of law, you will not require him to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will require him to furnish a duly certified copy of the statute of limitations of mining claims for the State or Territory, together with his sworn statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by his application; the area thereof; the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation with regard to his claim, and, if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and *bona fides* which he may desire to submit in support of his claim.

Certificate of No Suit.—68.—There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the State or Territory as aforesaid, other than that which has been finally decided in favor of the claimant.

Disinterested Proof.—69.—The claimant should support his narrative of facts relative to his possession, occupancy and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

Full Proofs.—70.—It will be to the advantage of claimants to make their proofs as full and complete as practicable.

MILL SITES.

Two Classes—71.—Section 2337 provides that "where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such non adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section."

72.—To avail themselves of this provision of law, parties holding the possessory right to a vein or lode, and to a piece of non-mineral land not contiguous thereto, for mining or milling purposes, not exceeding the quantity allowed for such purpose by section 2337 United States Revised Statutes, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper land office their application for a patent, under oath, in manner already set forth herein, which application, together with the plat and field notes, may include, embrace, and describe, in addition to the vein or lode, such non-contiguous mill site, and after due proceedings as to notice, &c., a patent will be issued conveying the same as one claim.

Lots "A" and "B"—73.—In making the survey in a case of this kind, the lode claim should be described in the plat and field notes as "Lot No. 37. A." and the mill site as "Lot No. 37 B," or whatever may be its appropriate numerical designation; the course and distance from a corner of a mill site to a corner of the lode claim to be invariably given in such plat and field notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill site as well as upon the vein or lode for the statutory period of sixty days. In making the entry no separate receipt or certificate need be issued for the mill site, but the whole area of both lode and mill site will be embraced in one entry, the price being five dollars for each acre and fractional part of an acre embraced by such lode and mill site claim.

Mill Site Without Lode.—74.—In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode, the law permits him to make application therefor in the same manner prescribed herein for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill site at said price per acre.

Proof of Non-Mineral Character and of Use by Applicant.—75.—In every case there must be satisfactory proof that the land claimed as a mill site is not mineral in character, also showing how and in what manner said mill site is used or occupied by said claimant for mining or milling purposes, which proof may, where the matter is unquestioned, consist of the sworn statement of the claimant, supported by that of one or more disinterested persons capable from acquaintance with the land to testify understandingly. *

Five Acre Limit.—76.—The law expressly limits mill site locations made from and after its passage to *five acres*.

77.—The Registers and Receivers will preserve an unbroken consecutive series of numbers for all mineral entries.

CITIZENSHIP.

Proof of Citizenship of Mining Claimants.—78.—The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of their charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the affidavit of their duly authorized agent, made upon his own knowledge, or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This affidavit must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the affidavit of citizenship to act for them in the matter of their application for patent.

79.—In case of an individual or an association of individuals who do not appear by their duly authorized agent, you will require the affidavit of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence.

80.—In case an applicant has declared his intention to become a citizen, or has been naturalized, his affidavit must show the date, place and the court before which he declared his intention or from which his certificate of citizenship issued, and present residence.

* For form of Affidavit under rule 75 see APPLICATION FOR PATENT.

Who May Take Affidavit.—81.—The affidavit of the claimant as to citizenship may be taken before the register or receiver, or any other officer authorized to administer oaths*. If citizenship is established by the testimony of disinterested persons, such testimony may be taken at any place before any person authorized to administer oaths, and whose official character is duly verified.

MINERAL DEPUTIES—FEES AND CHARGES.

Newspaper Charges.—82.—Section 2334 provides for the appointment of surveyors of mineral claims, authorizes the Commissioner of the General Land Office to establish the rates to be charged for surveys and for newspaper publications, prescribes the fees allowed to the local officers for receiving and acting upon applications for mining patents and for adverse claims thereto, &c.

Under this authority of law the following rates have been established as the maximum charges for newspaper publications in mining cases:

a Where a daily newspaper is designated the charge shall not exceed seven dollars for each ten lines of space occupied, and where a weekly newspaper is designated as the medium of publication, five dollars for the same space will be allowed. Such charge shall be accepted as full payment for publication in each issue of the newspaper for the entire period required by law.

It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and the said rates established upon the understanding that they are to be in the usual body-type used for advertisements.

b For the publication of citations in contests or hearings involving the character of lands, the charges shall not exceed eight dollars for five publications in weekly newspapers, or ten dollars for publications in daily newspapers for thirty days.

Deputy Surveyors.—83.—The surveyors general of the several districts will, in pursuance of said law, appoint in each land district as many *competent* deputies for the survey of mining claims as may seek such appointment; it being distinctly understood that all expenses of these notices and surveys are to be borne by the mining claimants and not by the United States: the system of making *deposits* for mineral surveys, as required by previous instructions, being hereby revoked as regards *field work*: the claimant having the option of employing *any* deputy surveyor within such district to do his work in the field.

* See note ante p. 223.

Payment of Surveyor General.—84.—With regard to the *platting* of the claim and other *office-work* in the Surveyor General's office, that officer will make an estimate of the cost thereof, which amount the claimant will deposit with any assistant United States Treasurer, or designated depository, in favor of the United States Treasurer, to be passed to the credit of the fund created by "individual depositors for surveys of the public lands," and file with the Surveyor General duplicate certificates of such deposit in the usual manner.

One Deputy to a District.—85.—The surveyors general will endeavor to appoint deputy mineral surveyors so that one or more may be located in each mining district for the greater convenience of miners.

Oath. Duties of Deputies.—86.—The usual oaths will be required of these deputies and their assistants as to the correctness of each survey executed by them.

The duty of the deputy mineral surveyor ceases when he has executed the survey and returned the field-notes and preliminary plat thereof with his report to the surveyor-general. He will not be allowed to prepare for the mining-claimant the papers in support of an application for patent, or otherwise perform the duties of an attorney before the land-office in connection with a mining claim.

The surveyors-general and local land-officers are expected to report any infringement of this regulation to this office.

Statement of Charges.—87.—The law requires that each applicant shall file with the register and receiver a sworn statement of all charges and fees paid by him for publication of notice and for survey; together with all fees and money paid the register and receiver, which sworn statement is required to be transmitted to this office, for the information of the Commissioner.

Exorbitant Charges.—88.—Should it appear that excessive or exorbitant charges have been made by any surveyor or any publisher, prompt action will be taken with the view of correcting the abuse.

89.—The fees payable to the register and receiver for filing and acting upon applications for mineral land patents are five dollars to each officer, to be paid by the applicant for patent at the time of filing, and the like sum of five dollars is payable to each officer by an adverse claimant at the time of filing his adverse claim.

Legal Tender.—90.—All fees or charges under this law may be paid in United States currency.

Monthly Report to General Land Office.—91.—The register and receiver will, at the close of each month, forward to this office an abstract of mining applications filed, and a register of receipts, accompanied with an abstract of mineral lands sold, and an abstract of adverse claims filed.

Accounts of Land Officer.—92.—The fees and purchase money received by registers and receivers must be placed to the credit of the United States in the receiver's monthly and quarterly account, charging up in the disbursing account the sums to which the register and receiver may be respectively entitled as fees and commissions, with limitations in regard to the legal maximum.

HEARINGS TO ESTABLISH THE CHARACTER OF LANDS.

Hearing Before Nearest Officer.—93.—In every case where it becomes necessary under the law and existing instructions of this office that a hearing be held and testimony taken for the purpose of ascertaining the mineral or agricultural character of land, the local officers are directed to cause the evidence to be taken before a duly qualified officer whose office is located nearest the land in dispute, the distance to be computed by ordinary routes of travel.

Whenever the local office comes within this rule, the hearing will be held before the register and receiver.

It is intended to cause these hearings to be held, as far as practicable, in such manner as to afford the least inconvenience to persons interested. Should it appear, therefore, by written stipulation of all the parties that this purpose will best be subserved by the designation of any particular officer authorized to administer oaths within the land district in which the land in controversy is situated, the instructions herein may be departed from in accordance with such stipulation. Such deviation may also be allowed where the officer who would, otherwise, be designated is an interested party, or where, for other good reason, his selection would be improper.

When the evidence is taken before an officer other than the register and receiver, the record should be sealed up, the title of the case indorsed on the envelope, and the whole returned by mail or express to the register and receiver.

On the 27th April, 1880, in accordance with the directions of the Secretary of the Interior this office revoked the withdrawals theretofore made, upon general information, that vast tracts of public land were mineral in character, and instructed the local officers, in the absence of a specific allegation of the mineral character of land to allow applications for agricultural entry thereof, upon due proof.

Hereafter the only tracts of public land that will be withheld from entry as agricultural land on account of its mineral character will be such as are returned by the surveyor general as mineral; and even the presumption which is supported by such return may be overcome by testimony taken at a regular hearing.

94.—Hearings to determine the character of land as practically distinguished, are of two kinds:

1st. Where lands which are sought to be entered and patented as agricultural are alleged by affidavit to be mineral, or when sought as mineral their non-mineral character is alleged.

The proceedings relative to this class are in the nature of a contest between two or more known parties, and the testimony may be taken on personal notice of at least ten days, duly served on all parties, or, if they cannot be found, then by publication, for thirty days in a newspaper of general circulation, to be designated by the register of the land office as published nearest to the land in controversy. If publication is made in a weekly newspaper, the notice must be inserted in five consecutive weekly issues thereof.

2d. When lands are returned as mineral by the Surveyor General.

When such lands are sought to be entered as agricultural, notice must be given by publication for thirty days, as aforesaid.

Notice—How Given and How Proved.—95.—All notices must describe the land, give the name and address of the claimant, the character of his claim, and the time, place, and purpose of the hearing.

Proof of service of notice, when personal, must consist of either acknowledgment of service indorsed on the citation, (which is always desirable,) or the affidavit of the party serving the same, giving date, place, and manner of service, indorsed as aforesaid.

Proof of publication must be the affidavit of the publisher of the newspaper, stating the period of publication, giving dates, stating whether in a daily or weekly issue, and a copy of the notice so published must be attached to, and form a part of the affidavit.

Proof of posting on the claim must be made by the affidavits of two or more persons who state when and where the notice was posted; that it remained so posted during the prescribed period, giving dates, and a copy of the notice so posted must be attached to, and made a part of, the affidavits.

Proof of notice is indispensable to the regularity of proceedings, and must accompany the record in every case.

The expense of notice must in every case be paid by the parties thereto.

96.—At the hearing there must be filed the affidavit of the publisher of the paper that the said notice was published for the required time, stating when and for how long such publication was made, a printed copy thereof to be attached and made a part of the affidavit.

Examination of Witnesses.—97.—At the hearing the claimants and witnesses will be thoroughly examined with regard to the character of the land : whether the same has been thoroughly prospected ; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin or copper, or other valuable deposit which has ever been claimed, located, recorded, or worked ; whether such work is entirely abandoned, or whether occasionally resumed ; if such lode does exist, by whom claimed under what designation, and in which subdivision of the land it lies ; whether any placer mine or mines exist upon the land ; if so, what is the character thereof—whether of the shallow surface description, or of the deep cement, blue lead, or gravel deposits ; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes ; upon what particular ten-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all.

98.—The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, and the value thereof ; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular ten-acre subdivisions such crops are raised ; also which of these subdivisions embrace his improvements, giving in detail the extent and value of his improvements, such as house, barn, vineyard, orchard, fencing, etc.

Contest Between Settlers and Miners.—99.—It is thought that *bona fide* settlers upon lands really agricultural will be able to show, by a clear, logical, and succinct chain of evidence, that their claims are founded upon law and justice ; while parties who have made little or no permanent agricultural improvements, and who only seek title for speculative purposes, on account of the mineral deposits known to themselves to be contained in the land, will be defeated in their intentions.

100.—The testimony should be as full and complete as possible ; and, in addition to the leading points indicated above, everything of importance bearing upon the question of the character of the land should be elicited at the hearing.

101.—Where the testimony is taken before an officer who does not use a seal, other than the register and receiver, the official character of such officer must be attested by a clerk of a court of record, and the testimony transmitted to the register and receiver, who will thereupon examine and forward the same to this office, with their joint opinion as to the character of the land as shown by the testimony.

Division Contested. Ground Survey.—102.—When the case comes before this office, such an award of the land will be made as the law and the facts may justify; and in cases where a survey is necessary to set apart the mineral from the agricultural land in any forty-acre tract, the necessary instructions will be issued to enable the agricultural claimant, *at his own expense*, to have the work done, at his option, either by United States deputy, county, or other local surveyor; the survey in such case may be executed in such manner as will segregate the portion of land actually containing the mine, and used as surface ground for the convenient working thereof, from the remainder of the tract, which remainder will be patented to the agriculturist to whom the same may have been awarded, subject, however, to the condition that the land may be entered upon by the proprietor of any vein or lode for which a patent has been issued by the United States for the purpose of extracting and removing the ore from the same, where found to penetrate or intersect the land so patented as agricultural, as stipulated by the mining act.

Proof of Survey. Affidavits, Before Whom Taken.—103.—Such survey when executed must be properly sworn to by the surveyor, either before a notary public, officer of a court of record, or before the register or receiver, the deponent's character and credibility to be properly certified to by the officer administering the oath.

Platting Same.—104.—Upon the tiling of the plat and field notes of such survey, duly sworn to as aforesaid, you will transmit the same to the surveyor general for his verification and approval; who, if he finds the work correctly performed, will properly mark out the same upon the original township plat in his office, and furnish authenticated copies of such plat and description both to the proper local land office and to this office, to be affixed to the duplicate and triplicate township plats respectively.

Segregation of Agricultural Claim.—105.—In cases where a portion of a forty-acre tract is awarded to an agricultural claimant and he causes the segregation thereof from the mineral portion, as aforesaid, such agricultural portion will not be given a numerical designation as in the case of surveyed mineral claims, but will simply be described as the "Fractional ——— quarter of the ——— quarter of section ———, in township ———, of range ———, meridian, containing ——— acres, the same being exclusive of the land adjudged to be mineral in said forty-acre tract."

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106.—The surveyor must correctly compute the area of such agricultural portion, which computation will be verified by the surveyor general.

Order for Entry.—107.—After the authenticated plat and field notes of the survey have been received from the surveyor general, this office will issue the necessary order for the entry of the land, and in issuing the receiver's receipt and register's patent certificate you will invariably be governed by the description of the land given in the order from this office.

Costs.—108.—The fees for taking testimony and reducing the same to writing in these cases will have to be defrayed by the parties in interest. Where such testimony is taken before any other officer than the register and receiver, the register and receiver will be entitled to no fees.

Land Partly Mineral.—109.—If, upon a review of the testimony at this office, a ten-acre tract should be found to be properly mineral in character, that fact will be no bar to the execution of the settler's legal right to the remaining *non-mineral* portion of his claim, if contiguous.

Protection Against Mineral Entry of Non-Mineral Land.—110.—No fear need be entertained that miners will be permitted to make entries of tracts ostensibly as mining claims, which are not mineral, simply for the purpose of obtaining possession and defrauding settlers out of their valuable agricultural improvements; it being almost an impossibility for such a fraud to be consummated under the laws and regulations applicable to obtaining patents for mining claims.

Proceedings if Land Awarded to be Mineral.—111.—The fact that a certain tract of land is decided upon testimony to be mineral in character is by no means equivalent to an award of the land to a miner. A miner is compelled by law to give sixty days publication of notice, and posting of diagrams and notices, as a preliminary step; and then, before he can enter the land, he must show that the land yields mineral; that he is entitled to the possessory right thereto in virtue of compliance with local customs or rules of miners, or by virtue of the statute of limitations; that he or his grantors have expended, in actual labor and improvements, an amount of not less than five hundred dollars thereon, and that the claim is one in regard to which there is no controversy or opposing claim. After all these proofs are met, he is entitled to have a survey made at his own cost where a survey is required, after which he can enter and pay for the land embraced by his claim.

112.—Blank forms for proofs in mineral cases are not furnished by the General Land Office.

Approved, N. C. McFARLAND, Commissioner,

S. J. KIRKWOOD, Secretary.

The rules published in 1881 have been amended from time to time but never since formally revised.

SURVEYOR GENERAL'S RULES.

The following constitute the circular of the office now (March 1888) in force originally published in 1886. Their directions as far as applicable should be followed when surveys are made by professional surveyors in other cases as well as upon official surveys.

If the location survey has been carefully and correctly made the official survey, though it must still be made in the field, requires little additional labor.

INSTRUCTIONS TO U. S. DEPUTY MINERAL SURVEYORS, FOR THE DISTRICT OF COLORADO—GENERAL RULES.

1—All official communications must be addressed to the Surveyor General. You will always refer to the date and subject matter of the letter to which you reply, and when a mineral claim is the subject of correspondence, you will give the name, ownership and survey number.

Surveyor's Record.—2.—You should keep a complete record of each survey made by you, and the facts coming to your knowledge at the time, as well as copies of all your field notes, reports and official correspondence, in order that such evidence may be readily produced when called for at any future time.

Alterations and Erasures.—3.—Field notes and other reports must be written in a clear and legible hand, and upon the proper blanks furnished by this office. *No cut sheets, interlineations or erasures* will be allowed; and no abbreviations or symbols must be used, except such as are indicated in the specimen field notes.

Order Necessary.—4.—No return by you will be recognized as official unless made in pursuance of a special order from this office.

Claimant only, Liable for Charges.—5.—The claimant is required in all cases, to make satisfactory arrangements with you for the payment for your services and those of your assistants in making the survey, as the United States will not be held responsible for the payment of the same. You will call the attention of applicants for mineral survey orders to the requirements of the circular of this date in the appendix.

Removal.—6.—You will promptly notify this office of any change in your postoffice address. Upon permanent removal from the State, you are expected to resign your appointment.

NOT TO ACT AS ATTORNEY.

7.—You are precluded from acting, either directly or indirectly, as attorney in mineral claims. Your duty in any particular case ceases when you have executed the survey and returned the field notes and preliminary plat, with your report to the Surveyor General. You will not be allowed to prepare for the mining claimant the papers in support of his application for patent, or otherwise perform the duties of an attorney before the land office in connection with a mining claim. You are not permitted to combine the duties of surveyor and notary public in the same case by administering oaths to the parties in interest. In short, you must have absolutely nothing to do with the case except in your official capacity as surveyor. You will make no survey of a mineral claim in which you hold an interest.

THE FIELD WORK

Survey Must be Actual.—8.—The survey made and reported must, in every case, be an actual survey on the ground in full detail, made by you in person after the receipt of the order, and without reference to any knowledge you may have previously acquired by reason of having made the location survey or otherwise, and must show the actual facts existing at the time. If the season of the year, or any other cause, renders such personal examination impossible, you will postpone the survey, and under no circumstances rely upon the statements or surveys of other parties, or upon a former examination by yourself.

The term *survey* in these instructions applies not only to the usual field work, but also to the examinations required for the preparation of your affidavits of five hundred dollars expenditure, descriptive reports on placer claims and all other reports.

SURVEY AND LOCATION.

Survey Must Conform to Location.—9.—The survey must be made in strict conformity with, or be embraced within, the lines of the record of location upon which the order is based. If the survey and location are identical, that fact must be clearly and distinctly stated in your field notes. If not identical, a bearing and distance must be given from each established corner of the survey to the corresponding corner of the location. The lines of the location, as found upon the ground, must be laid down upon the preliminary plat in such manner as to contrast and show their relation to the lines of the survey.

Old Records.—10.—If the record of location has been made prior to the passage of the mining act of May 10, 1872, and is not sufficiently definite and certain to enable you to make a correct survey therefrom, you are required, after reasonable notice in

writing, to be served personally or through the United States mail on the applicant for survey and adjoining claimants, whose residence or postoffice address you may know, or can ascertain by the exercise of reasonable diligence, to take testimony of neighboring claimants and other persons who are familiar with the boundaries thereof as originally located and asserted by the locators of the claim, and after having ascertained by such testimony the boundaries as originally established, you will make a survey in accordance therewith, and transmit full and correct returns of the survey, accompanied by the copy of the record of location, the testimony, and a copy of the notice served on the claimant and adjoining proprietors, certifying thereon when, in what manner, and on whom service was made.

Disputed Boundaries.—11.—If the location has been made subsequent to the passage of the mining act of May 10, 1872, and the law has been complied with in the manner of marking the location on the ground and recording the same, and any question should arise in the execution of the survey as to the identity of monuments, marks or boundaries which cannot be determined by a reference to the record, you are required to take testimony in the manner hereinbefore prescribed for surveys of claims located prior to May 10, 1872, and having thus ascertained the true and correct boundaries originally established, marked and recorded, you will make the survey accordingly.

Corners Not to Be Changed.—12.—In accordance with the principle that courses and distances must give way when in conflict with fixed objects and monuments, you will not, under any circumstances, change the corners of the location for the purpose of making them conform to the description in the record. If the difference from the location be slight, it may be explained in the field notes, but if there should be a wide discrepancy, you will report the facts to this office and await further instructions.

INSTRUMENT.

13.—All mineral surveys must be made with a SOLAR TRANSIT, or other instrument operating independently of the magnetic needle, and all courses must be referred to the true meridian. It is deemed best that a solar transit should be used under all circumstances. The variation should be noted at each corner of the survey.

CONNECTIONS.

14.—Connect corner No. 1 of your survey by course and distance with some corner of the public survey or a United States location monument, if the claim lies within two miles of such corner or monument. If both are within the required distance, you will connect with the nearest corner of the public survey.

LOCATION MONUMENTS.

Mineral Monuments.—15.—In case your survey is situated in a district where there are no corners of the public survey and no monuments within the prescribed limits, you will proceed to establish a mineral monument, in the location of which you will exercise the greatest care to insure permanency as to site and construction.

Should Be Permanent.—16.—The site, when practicable, should be some prominent point visible for a long distance from every direction, and should be so chosen that the permanency of the monument will not be endangered by snow, rock or land slides, or other natural causes.

How Marked.—17.—The location monument should consist of a post eight feet long and six inches square set three feet in the ground, and protected by a well built conical mound of stone three feet high and six feet base. The letters U. S. L. M. followed by a number, *identical with the number of the survey for which the monument is established* must be scribed on the post and also chiseled on a large stone in the mound, or on the rock in place that may form the base of the monument. There is no objection to the establishment of a location monument of larger size, or of other material of equally durable character.

Ties of Mineral Monument.—18.—From the monument, connections by course and distance must be taken to two or three bearing trees or rocks, and to any well known natural and permanent objects in the vicinity, such as the confluence of streams, prominent rocks, buildings, shafts or mouths of adits. Bearings should also be taken to prominent mountain peaks, and the approximate distance and direction ascertained from the nearest town or mining camp. A detailed description of the location monument must be included in the field notes of the survey for which it is established.

CORNERS.

19.—Corners may consist of

First—A stone at least twenty-four inches long by six inches square set eighteen inches in the ground.

Second—A post at least four and a half feet long by four inches square set twelve inches in the ground and surrounded by a mound of stone or earth two and a half feet high and five feet base.

Third—A rock in place.

Marking Corners.—20.—All corners must be established in a permanent and workmanlike manner, and the corner and survey number must be neatly chiseled or scribed on the sides

facing the claim. When a rock in place is used its dimensions above ground must be stated, and a cross chiseled at the exact corner point.

Inaccessible Corners.—21.—In case the point for the corner be inaccessible or unsuitable, you will establish a witness corner, which must be marked with the letters W. C. in addition to the corner and survey number. The witness corner should be located upon a line of the survey and as near as practicable to the true corner, with which it must be connected by course and distance. The reason for the establishment of a witness corner must always be stated in the field notes.

Tying Corners.—22.—The identity of all corners should be perpetuated by taking courses and distances to bearing trees, rocks, and other objects, as prescribed in the establishment of location monuments. If an official survey has been made within a reasonable distance in the vicinity, you will run a connecting line to some corner of the same, and connect in like manner with all conflicting surveys and claims.

TOPOGRAPHY.

23.—Note carefully all topographical features of the claim, taking distances on your lines to intersections with all streams, gulches, ditches, ravines, mountain ridges, roads, trails, etc., with their widths, courses and other data that may be required to map them correctly. If the claim lies within a townsite, locate all municipal improvements, such as blocks, streets and buildings.

24.—You are required also to locate all mining and other improvements upon the claim by courses and distances from corners of the survey, or by rectangular offsets from the center line, specifying the dimensions and character of each in full detail.

CONFLICTS.

25.—If in running the exterior boundaries of a claim, you find that two surveys conflict, you will determine the courses and distances from the established corners at which the exterior boundaries of the respective surveys intersect each other, and run all lines necessary for the determination of the areas in conflict, both with surveyed and unsurveyed claims. You are not required, however, to show conflicts with unsurveyed claims unless the same are to be excluded.

26.—When a placer claim includes lodes, or when several lode locations are included as one claim in one survey, you will preserve a consecutive series of numbers for the corners of the whole survey in each case. In the former case you will first describe the placer claim in your field notes.†

PLACER CLAIMS AND MILL-SITES.

27.—The exterior lines of placer claims cannot be extended over other claims, and the conflicting areas excluded as with lode claims, it being the surface ground only, with side lines taken perpendicularly downward for which application is made. The survey must accurately define the boundaries of the *claim*. The same rule will apply to the survey of mill-sites.

Broken Claims.—28.—If by reason of intervening surveys or claims a placer or mill-site survey should be divided into separate tracts you will also preserve a consecutive series of numbers for the corners of the whole survey, and distinguish the detached portions as Lot No. 1, Lot No. 2, etc., connecting by course and distance a corner of each lot with some corner of the one previously described.

LODE AND MILL-SITE.

29. A lode and mill-site claim in one survey will be distinguished by the letters A and B following the number of the survey. The corners of the mill-site will be numbered independently of those of the lode. Corner No. 1 of the mill-site must be connected with a corner of the lode claim as well as with a corner of the public survey or U. S. location monument.

FIELD NOTES.

Details of.—30.—In order that the results of your survey may be reported to this office in a uniform manner, you will prepare your field notes and preliminary plat in strict conformity with the specimen field notes and plat, which are made part of these instructions. They are designed to furnish you with all needed information concerning the manner of describing the boundaries, corners, connections, intersections, conflicts and improvements, and stating the variation, area, location and other data connected with the survey of mineral claims, and contain forms of affidavits for the deputy surveyor and his assistants.

In your first reference to any other mineral claim you will give the name, ownership, and if surveyed, the survey number.

Total Area. Conflicts.—31.—The total area of a lode claim embraced by the exterior boundaries, and also the area in conflict with each intersecting survey or claim should be so stated, that the conflicts with any one or all of them may be included or excluded from your survey. This will enable the claimant to state in his application for patent the portions to be excluded in express terms, and to readily determine the *net area* of his claim.

32.—You will state particularly whether the claim is upon surveyed or unsurveyed public lands, giving in the former case the quarter section, township and range in which it is located, and in the latter the township as near as can be determined.

33.—The field notes must contain the postoffice address of the claimant or his authorized agent.

EXPENDITURE OF FIVE HUNDRED DOLLARS

34.—The claimant is required by law, either at the time of filing his application, or at any time thereafter, within the sixty days of publication, to file with the Register the certificate of the Surveyor General that five hundred dollars worth of labor has been expended or improvements made upon the claim by himself or grantors. The information upon which to base this certificate must be derived from the deputy who makes the actual survey and examination upon the premises, and such deputy is required to specify with particularity and full detail the character and extent of such improvements. See also Sec. 8.

35.—When a survey embraces several locations or claims held in common, constituting one entire claim, whether lode or placer, an expenditure of five hundred dollars upon such entire claim embraced in the survey will be sufficient and need not be shown upon each of the locations included therein.

36.—In case of a lode and mill-site claim in the same survey, an expenditure of five hundred dollars must be shown upon the lode claim only.

37.—Only actual expenditures and mining improvements, made by the claimant or his grantors, having a direct relation to the development of the claim, can be included in your estimate.

Superficial or Underground.—38.—The expenditures required may be made from the surface, or in running a tunnel for the development of the claim. Improvements of any other character, such as buildings, machinery or roadways, must be excluded from your estimate unless you show clearly that they are associated with actual excavations, such as cuts, tunnels, shafts, etc., and are essential to the practical development of the surveyed claim.

39.—You will give in detail the value of each mining improvement included in your estimate of expenditure, and when a tunnel or other improvement has been made for the development of other claims in connection with the one for which survey is made, your report must give the name, ownership, and survey number, if any, of each claim to which a proportion or interest is credited, and the value of the proportion or interest credited to each. The value of improvements made upon other locations or by a former locator who has abandoned his claim cannot be included in your estimate.

Form.—40.—In making out your certificate of the value of the improvements, you will follow the form prescribed in the specimen field notes.

Other Improvements.—41.—Following your certificate you will locate and describe all other improvements made by the claimant or other parties within the boundaries of the survey.

Expenditures Not Complete.—42.—If the value of the labor and improvements upon a mineral claim is less than five hundred dollars at the time of survey, you are authorized to file your affidavit of five hundred dollars expenditure at any time before the expiration of the sixty days of publication, but not afterwards unless by special instructions.

DESCRIPTIVE REPORTS ON PLACER CLAIMS.

43.—By General Land Office circular, approved September 23, 1882, you are required to make a full examination of all placer claims at the time of survey, and file with your field notes a descriptive report in which you will describe—

(a) The quality and composition of the soil, and the kind and amount of timber, and other vegetation.

(b) The *locus* and size of streams, and such other matters as may appear upon the surface of the claims.

(c) The character and extent of all surface and underground workings, whether placer or lode, for mining purposes.

(d) The proximity of centers of trade or residence.

(e) The proximity of well-known systems of lode deposits or of individual lodes.

(f) The use or adaptability of the claim for placer mining, and whether water has been brought upon it in sufficient quantity to mine the same, or whether it can be procured for that purpose.

(g) What works or expenditures have been made by the claimant or his grantors for the development of the claim, and their situation and location with respect to the same as applied for.

(h) The true situation of all mines, salt lies, salt springs, and mill seats, which come to your knowledge; or report that none exist on the claim, as the facts may warrant.

(i) Said report must be made under oath, and duly corroborated by one or more disinterested persons.

Special Order For—44.—Descriptive reports upon placer claims taken by legal sub-divisions are authorized only by special order, and must contain a description of the claim in addition to the foregoing requirements.

PRELIMINARY PLAT.

45.—You will file with your field notes a preliminary plat on drawing paper or tracing muslin, protracted on a scale of two hundred feet to an inch, on which you will note accurately all the topographical features and details of the survey in conformity with the specimen plat herewith. Pencil sketches will not be accepted.

REPORT.

46.—You will also submit with your return of survey a report upon the following matters incident to the survey, but not required to be embraced in the field notes.

Establishing the Meridian.—47.—If the meridian from which your courses were deflected was established by other means than by the solar apparatus attached to your transit, you will state in detail your observations and calculations for the establishment of such meridian.

Triangulations.—48.—If any of the lines of the survey were determined by triangulation or traverse, you will give in full detail the calculations whereby you arrived at the results reported in your field notes. You will also submit your calculations of areas of placer and mill-site claims or other irregular tracts.

Errors in Prior Surveys.—49.—You will mention in your report the discovery of any material errors in prior official surveys, giving the extent of the same.

ERRORS.

50.—Whenever a survey has been reported in error, the deputy surveyor who made it will be required to promptly make a thorough examination, upon the premises, and report the result under oath to this office. In case he finds his survey in error, he will report in detail all discrepancies with the original survey, and submit any explanation he may have to offer as to the cause. If, on the contrary, he should report his survey correct, a joint survey will be ordered to settle the differences with the surveyor who reported the error.

JOINT SURVEY.

51.—A joint survey must be made within ten days after the date of order, unless satisfactory reasons are submitted, under oath, for a postponement.

52.—The field work must in every sense of the term be a *joint* and not a separate survey, and the observations and measurements taken with the same instrument and chain, previously tested and agreed upon.

53.—The deputy surveyor found in error, or if both are in error the one who reported the same, will make out the field notes of the joint survey, which, after being duly signed and sworn to by both parties, must be transmitted to this office.

54.—The surveyor found in error will be required to pay all expenses of the joint survey and preliminary examinations incident thereto, including ten dollars per day to the surveyor whose work is proved to be substantially correct.

55.—Your field work must be accurately and properly performed, and your returns made in conformity with the foregoing instructions. Errors in the survey must be corrected at your own expense, and if the time required in the examination of your returns is increased by reason of your neglect or carelessness you will be required to make an additional deposit for office work. You will be held to a strict accountability for the faithful discharge of your duties, and will be required to observe fully the requirements and regulations in force as to making mineral surveys. If found incompetent as a surveyor, careless in the discharge of your duties, or guilty of a violation of said regulations, your appointment will be promptly revoked.

56.—All former instructions inconsistent with the foregoing are hereby recalled.

In connection with these rules are given certain forms for the Surveyor's return, all of which are printed under "APPLICATION FOR PATENT." (p. 244.)

SURVEYOR GENERAL'S CIRCULAR.

The office has, for the information of parties desiring to patent their claims, issued the following circular, under date of May 1, 1886:

To Applicants for Mineral Survey Orders in the District of Colorado:

Your attention is directed to the following requirements in the conduct of your business with this office, the same being based upon the United States mining laws and circular and special instructions from the Hon. the Commissioner of the General Land Office.

1. All applications for survey orders, descriptive reports on placer claims, or certificates of five hundred dollars expenditure, should be addressed to the Surveyor General and be signed by the claimants, their agent or attorney.

2. Each application should contain

(a) The name of the claimant in full, and as it is desired to appear in the application for patent.

(b) The name of the claim.

(c) The names of the land and mining district in which the claim is located.

3. You are required to file with each application for survey order, a copy of the record of location of the claim, properly certified by the recorder having charge of the records of the mining locations in the county where the claim is situate.

4. The deputy mineral surveyor is required to survey the claim in *strict conformity* with the location upon which the order of survey is based. You are, therefore, advised before filing your application to see that your location has been made in compliance with law and regulations, and that it properly describes the claim for which patent is sought. See General Land Office circular, dated November 20, 1873.—*Sickett*, 562.)

5. Par. 84, General Land Office Circular, dated October 31, 1881, relating to the expense of office work connected with the survey of mineral claims, reads as follows:

"With regard to the *platting* of the claim and other *office work* in the Surveyor General's office, that officer will make an estimate of the cost thereof, which amount the claimant will deposit with any assistant United States treasurer, or designated depository, in favor of the United States treasurer, to be passed to the credit of the fund created by 'individual depositors for surveys of the public lands,' and file with the Surveyor General duplicate certificates of such deposit in the usual manner."

6. The following is the estimated cost of platting and other office work in connection with the survey of mineral claims:

Lode claim.....	\$30.00
Placer claim.....	30.00
Mill-site claim.....	30.00
Mill-site included in one survey with lode claim	15.00
Each lode claim included in the survey of a placer claim.....	15.00
Several lode or placer locations included in one survey, each location.....	30.00
Descriptive report on placer claim taken by legal sub-divisions.....	5.00

7. Should the office work, in any case, amount to more than the above estimate, an additional deposit will be required.

8. In districts where there is no United States depository, you should deposit with the nearest assistant United States treasurer, or depository, and in all cases immediately forward the original certificate to the Secretary of the Treasury and the duplicate to this office, retaining the triplicate for your own use and security. Under no circumstances will the deposit be made by the Surveyor General.

9. An application for an amended survey order must be accompanied with a statement setting forth fully the reasons for the proposed amendment and all the material facts in the matter.

10. An application for the survey of a claim already surveyed must be accompanied with a certificate from the register of the land office that application for patent based upon such prior survey is not pending.

11.—Upon discovery of any error or defect in an order, you are requested to return it to this office for correction or amendment.

12.—*Rescinded.*

13.—The order of approval of surveys of mineral claims is prescribed by General Land Office circular, dated March 3, 1881, as follows :

“The mining survey first applied for shall have priority of action in all its stages in the office of the Surveyor General, including the delivery thereof, over any other survey of the same ground or any portion thereof.”

“When the survey first authorized is not returned within a reasonable period, and the applicant for a conflicting survey makes affidavit that he believes (stating the reasons for his belief), that such first applicant has abandoned his purpose of having a survey made, or is deferring it for vexatious purposes, to-wit, to postpone the subsequent applicant, the Surveyor General shall give notice of such charges to such first applicant, and call upon him for an explanation under oath of the delay. He shall also require the deputy mineral surveyor to make a full statement in writing, explanatory of the delay ; and if the Surveyor General shall conclude that good and sufficient reasons for such delay do not exist, he shall authorize the applicant for the conflicting survey to proceed with the same ; otherwise, the order of proceeding shall not be changed.”

“Whenever an applicant for a survey shall have reason to suppose that a conflicting claimant will also apply for a survey for patent, he may give a notice in writing to the Surveyor General, particularly describing such conflicting claim, and file a

copy of the notice of location of such conflicting claim. In such case the Surveyor General will not order or authorize any survey of such conflicting claim until the survey first applied for has been examined, completed, approved and platted and the plats delivered."

14. Your attention is directed to the first three paragraphs of General Land Office circular dated December 4, 1884, viz.:

"1. The rights granted to locators under section 2322, Revised Statutes, are restricted to such locations on veins, lodes or ledges as may be 'situated on the *public domain*.' In applications for lode claims where the survey conflicts with a prior valid lode claim or entry, and the ground in conflict is excluded, the applicant not only has no right to the excluded ground, but he has no right to that portion of any vein or lode the top or apex of which lies within such excluded ground, unless his location was prior to May 10, 1872. His right to the lode claimed terminates where the lode, in its ownward course or strike, intersects the exterior boundary of such excluded ground and passes within it."

"2. The end-line of his survey should not, therefore, be established beyond such intersection, unless it should be necessary so to do for the purpose of including ground held and claimed under a location which was made upon public land and valid at the time it was made. To include such ground (which may possibly embrace other lodes) the end-line of the survey may be established within the conflicting survey, but the line must be so run as not to extend any further into the conflicting survey than may be necessary to make such end-line parallel to the other end line, and at the same time embrace the ground so held and claimed. The useless practice in such cases of extending *both* the side lines of a survey into the conflicting survey and establishing an end-line wholly within it, beyond a point necessary under the rule just stated, will be discontinued."

"3. These instructions will be observed by Surveyors General in all cases where surveys have not been approved by them prior to receipt thereof."

15. You have the option of employing any U. S. deputy mineral surveyor in the district to execute the order of survey, and must make satisfactory arrangements with such surveyor for the payment for his services and those of his assistants in making the survey, as the United States will not be held responsible for the payment of the same. The duty of the deputy surveyor in any particular case ceases when he has executed the survey and returned the same to this office. He is not allowed to prepare for the mining-claimant the papers in support of an application for patent, being precluded from acting either directly or indirectly as attorney in mineral claims.

16. You are advised of your right of appeal to the Hon. Commissioner of the General Land Office from the approval or

disapproval of the survey of your claim. The appeal must be in writing or in print, and should set forth in brief and clear terms the specific points of exception to the ruling appealed from.

1* APPLICATION FOR PATENT.

The following pages are intended to contain the forms of application and proceedings to obtain Patent in the order of time in which the several papers should be made and filed.

THE OFFICIAL SURVEY.—A citizen of the United States, or one who has declared his intention to become such, or a corporation chartered within the United States, being the holder of the possessory title to a lode claim, causes application for an official survey to be made by an

(A.) APPLICATION FOR ORDER FOR SURVEY. 2*

Denver, *February 1, 1888.*

To the U. S. Surveyor General, District of Colorado, Denver.

SIR:—You are requested to issue an order for an official survey of the mining claim of *Jesse White*, upon the *Bear Lode*, located in *Alpine Mining District, Lake County, Leadville Land District, Colorado.*

I herewith transmit certified copy of the location certificate of said claim, and have deposited for office fees 3* on same \$30.00

1*.—For many valuable suggestions upon points covered by this book, especially in this chapter, I am under obligations to *A. E. Chase, Esq.*, Deputy U. S. Mineral Surveyor, Georgetown; *Richard Harvey, Esq.*, Register U. S. Land Office, Central; and *Hon. Oney Carstarphen*, Surveyor General.

2*.—The forms for placer and mill-site applications are substantially the same.

3*.—For costs in Surveyor General's office, *See Rules 6 and 7 page 241.*

to the credit of the Treasurer of the United States, at the *Denver National Bank* (U. S. Depository) with request that duplicate certificate be forwarded to you.

Send order to *William Byrd Page*, U. S. Dep. Min. Sur., at *Leadville*, Colorado. Yours, respectfully,

JESSE WHITE,
Claimant.

By *GEORGE H. KOHN*, Attorney.

Post Office address (of Claimant) *Silver Cliff, Colorado*.

Post Office address (of Attorney) *17 Clayton Block, Denver*.

The payment mentioned in the application is not by draft to the Surveyor General but by deposit in a bank recognized as a United States Depository. Upon payment to such bank the claimant receives triplicate certificates of deposit, of which he mails the *Original* to the Secretary of the Treasury at Washington; the *Duplicate* he mails with the letter (A) to the Surveyor-General; (or the bank forwards it) and the *Triplicate* he retains.

This certificate is a mere receipt for money and has no further value, except where the application is withdrawn, in which case, *provided* no office work has been done, the money will be allowed to apply on another survey.

In reply to the Application (A) the Surveyor mails to the attorney for the applicant the

(B.) ORDER FOR SURVEY OF MINERAL CLAIM.

DEPARTMENT OF THE INTERIOR,)
OFFICE OF U. S. SURVEYOR-GENERAL. }

Denver, Colo., *February 2, 1888.*

To any U.S. Deputy Mineral Surveyor in the District of Colorado.

SIR:—You are hereby directed to survey the claim of *Jesse White*, upon the *Bear Lode*, in *Alpine Mining District*, *Lake County*, Colorado. This survey will be designated "Survey No 5,555, *Leadville Land District*," and must be made in strict conformity with the location certificate (or amended location certificate) dated *June 28, 1885*.

ONEY CARSTARPHEN.
U. S. Surveyor-General for Colorado.

The numbers of the survey lots were formerly consecutive to each mineral district, but since the abolition of mineral districts they are consecutive throughout the State, beginning with No. 4,501, with which number the new series was commenced November 30, 1886.

This order of survey "B" being received, is delivered to such Deputy U. S. Surveyor as the applicant may prefer which deputy must proceed in person to the premises, make an actual survey, and mark each post with the No. of the survey and the No. of the corner.

Where there has been a previous survey from which the certificate of location has been made, it will be followed.

The copy of location certificate mentioned as enclosed in "A" must be certified by the recorder.

The Deputy, in making his official survey, must follow the original lines as called for in such copy.

The Surveyor-General will not allow a serious departure from the lines called for in the Location Certificate, without insisting upon the filing of an amended or re-location certificate in the office of the recorder of the proper county, and the deposit of a certified copy of such amended record in the Surveyor-General's office, and when such certified copy has been filed an amended order of survey issues and *if it takes in any new ground the number of the survey lot is postponed to all the numbers which have intervened.* An additional fee of \$2.50 is charged for the amended order; besides the cost of additional labor, if any, imposed on the Surveyor-General's office.

Or if the certificate be indefinite, or if the end lines are not parallel, or if not properly tied, or if the certificate

be without date or otherwise irregular, it will be returned for amendment. Care in the first instance will obviate delays on such grounds.

For form of amended location certificate *see pages 71 and 73.*

In surveys upon old lodes (before May 10, 1872,) whose location certificates were not supposed to call for course or monument, the deputy is presumed to make his official survey according to the location and original claim of the locator, but practically it is made wherever it may be supposed to cover the vein, or wherever vacant ground can be found to include in the survey.

In almost all cases of early locations (and in many recent ones) it is advisable to make a formal re-location before asking for order of survey. This may save time in the surveyor's office and prevent fatal results in resisting adverse claims.

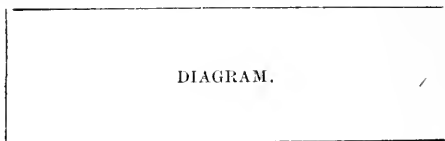
For instructions as to manner of making survey on the ground, see "*Surveyor-General's Rules*;" also page 43.

• The survey being complete the deputy makes and forwards to the Surveyor-General a diagram of the lode giving its corners, courses, distances, ties, adjoiners and improvements which is known as

(C.) THE PRELIMINARY PLAT.

The plat made by the deputy was formerly treated as the official plat of the claim, from which the connected plat of all claims kept by the Surveyor-General was made, but under present practice the Deputy's plat is only treated as a correction to the field notes, all official plats now being made in the office of the Surveyor-General.

Survey No. 5,555 *Leadville* Land District.



Surveyed February 8-9, 1888, by *William Byrd Page*, U. S. Deputy Mineral Surveyor.

Along with this diagram, or preliminary plat "C," the deputy forwards to the Surveyor-General his

(D.) FIELD NOTES,

the following form being arranged to illustrate the more ordinary complications:

Survey No. 5,555.

Leadville Land District.

FIELD NOTES

Of the survey of the claim of *Jesse White*, upon the *Bear* Lode, in *Alpine* Mining District, *Lake* County, Colorado.

Surveyed by *William Byrd Page*, U. S. Deputy Mineral Surveyor.

Survey begun *February* 8, 1888, and completed *February* 9, 1888.

Address of Claimant:

JESSE WHITE, Silver Cliff, Colorado.

SURVEY NO. 5,555.—BEAR LODGE.

FEET.

Beginning at Cor. No. 1.

Identical with Cor. No. 1 of the location.

A spruce post, 5 ft. long, 4 ins. square, set 2 ft. in the ground, with mound of stone, marked $\frac{1}{5555}$ whence

The W. $\frac{1}{4}$ cor. Sec. 22, T. 11 S. R. 81 W. of the 6th Principal Meridian, bears S. 79° 34' W. 1378.2 ft.

Cor. No. 1, Gottenburg lode (unsurveyed), Neals Mattson, claimant, bears S. $40^{\circ} 29'$ W. 187.67 ft.

A pine 12 ins. dia., blazed and marked B. T. $\overline{5555}^1$ bears S. $7^{\circ} 25'$ E. 22 ft.

Mount Ouray bears N. 11° E.

Hiawatha Peak bears N. $47^{\circ} 45'$ W.

Thence S. $24^{\circ} 45'$ W.

Va. $15^{\circ} 12'$ E.

1242. To trail, course N. W. and S. E.

1365.28 To Cor. 2.

A granite stone 25x9x6 ins., set 18 ins. in the ground chiseled $\overline{5555}^2$ whence

Cor. No. 2 of the location bears S. $24^{\circ} 45'$ W. 134.72 ft.

Cor. No. 1, Sur. No. 2560, Carnarvon Lode, David Davis et al., claimants, bears S. $3^{\circ} 28'$ E. 116.6 ft.

North end of bridge over Columbine creek bears S. $65^{\circ} 15'$ E. 650 ft.

Thence N. $65^{\circ} 15'$ W.

Va. $15^{\circ} 20'$ E.

152. Intersect line 4-1, Sur. No. 2560, at N. $38^{\circ} 52'$ W. 231.2 ft. from Cor. No. 1.

300. To Cor. No. 3.

A cross at corner point, and $\overline{5555}^3$ chiseled on a granite rock in place, 20x14x6 ft. above the general level, whence

Cor. No. 3 of the location bears S. $24^{\circ} 45'$ W. 134.72 ft.

A spruce 16 ins. dia., blazed and marked B. T. $\overline{5555}^3$ bears S. 58° W. 18 ft,

Thence N. $24^{\circ} 45'$ E.

Va. $15^{\circ} 20'$ E.

73.4 Intersect line 4-1 Sur. No. 2,560 at N. $38^{\circ} 52'$ W. 396.4 ft. from Cor. No. 1.

237. To trail, course N. W. and S. E.

1000.9 Intersect line 2-3, Gottenburg lode, at N. $25^{\circ} 56'$ W. 76.26 ft. from Cor. No. 2.

1365.28 To Cor. No. 4.

Identical with Cor. No. 4 of the location.

A pine post 4.5 ft. long 5 ins. square, set one foot in the ground, with mound of earth and stone, marked $\overline{5555}^4$ whence

A cross chiseled on rock in place, marked B. R. 555¹₃
bears N. 28° 10' E. 58.9 ft.

Thence S. 65° 15' E.

Va. 15° 12' E.

28.5 Intersect line 4-1, Gottenburg lode, at N. 25° 56' W. 285.13
ft. from Cor. No. 1.

300. To Cor. No. 1, the place of beginning. *1.

AREA.

Total area of *Bear* lode..... 9.403 acres

Less area in conflict with

Sur. No. 2,560..... .124 acre

Gottenburg lode.....1.363 " 1.487 acres

Net area *Bear* lode..... 7.916 acres

LOCATION.

This claim is located in the W. $\frac{1}{2}$ Sec. 22, T. 11 S. R. 81 W.

EXPENDITURE OF FIVE HUNDRED DOLLARS.

I certify that the value of the labor and improvements upon this claim, placed thereon by the claimant and his grantors, is not less than five hundred dollars, and that said improvements consist of

The discovery shaft of the *Bear* lode, 6x3 ft., 10 ft. deep in earth and rock, which bears from Cor. No. 2 N. 6° 42' W. 287.5 ft.
Value \$80.

An incline 7x5 ft., 45 ft. deep in coarse gravel and rock, timbered, course N. 58° 15' W., dip 62°, the mouth of which bears from Cor. No. 2 N. 15° 37' E. 908 ft.
Value \$550.

A log shaft-house 14 ft. square, over the discovery shaft.
Value \$100.

Two-thirds interest in an adit 6.5x5 ft., running due west 835 ft., timbered, the mouth of which bears from Cor. No. 2 N. 61° 15' E. 920 ft.

*1. Adjoining claimants are mentioned as they are reached in the notes, as they ambit the claim.

This adit is in course of construction for the development of the *Bear* lode and also for the *Carnarvon* lode, Survey No. 2,560, David Davis et al., claimants, the remaining one-third interest therein having already been included in the estimate of five hundred dollars expenditure upon the latter claim.

Total value of adit, \$13,000.

A drift 6.5 x 4 ft. on the *Bear* lode, beginning at a point in adit 800 ft. from the mouth, and running N. 20° 20' E. 195 ft., thence N. 54° 15' E. 40 ft. to breast. Value \$2,800.

I further certify that no portion of the improvements claimed have been included in the estimate of five hundred dollars expenditure upon any other claim.

OTHER IMPROVEMENTS.

A log cabin 35 x 28 ft., the S. W. corner of which bears from Cor. No. 3 N. 30° 41' E. 495 ft.

Said cabin belongs to Jesse White, the claimant.

An adit 6 x 4 ft., running N. 70° 59' W. 100 ft., the mouth of which bears from Cor. No. 1 S. 58° 12' W. 323 ft., belonging to Neals Mattson, claimant of the *Gottenburg* lode.

INSTRUMENT.

The survey was made with a *Young & Sons* mountain transit No. 5322, with *Smith's* solar attachment. The courses were deflected from the true meridian as determined by solar observations. The distances were measured with a 50 ft. steel tape.

MEMORANDA AS TO CHAINMEN, &C. PART OF "D."

List of the names of individuals employed to assist in running, measuring and marking the lines and corners described in the foregoing field notes of the survey of the claim of *Jesse White* upon the *Bear* lode, in *Alpine* Mining District, *Lake* County, Colorado.

F. J. Bancroft, } Witnesses.
W. A. Jayne, }

AFFIDAVIT OF CHAINMEN OR OTHER HELPERS. PART OF "D."

We hereby certify that we assisted Wm. Byrd Page, U. S. Deputy Mineral Surveyor, in surveying the exterior boundaries and marking the corners of the claim of *Jesse White* upon the *Bear* lode, in *Alpine* Mining District, *Lake* County, Colorado, and that said survey has been in all respects, to the best of our

knowledge and belief, well and faithfully surveyed and the boundary monuments planted according to the instructions furnished by the Surveyor General.

F. J. Bancroft,
W. A. Jayne.

Subscribed and sworn to by the above named persons before me, this 10th day of February, 1888.

[Seal.]

Appleton J. Ide,
Notary Public.

AFFIDAVIT OF DEPUTY. PART OF "D."

I, *William Byrd Page*, U. S. Deputy Mineral Surveyor, do solemnly swear that in pursuance of an order from Oney Carstarphen, Surveyor General of the public lands in the State of Colorado, bearing date the 2d day of February, 1888, and in strict conformity with the laws of the United States, and instructions furnished by said Surveyor General, I have faithfully surveyed the claim of *Jesse White* upon the *Bear* lode, in *Alpine* Mining District, *Lake* County, Colorado, and do further solemnly swear that the foregoing are the true and original field notes of such survey, and that the improvements are as therein stated.

Wm. Byrd Page,
U. S. Deputy Mineral Surveyor.

Subscribed by said *Wm. Byrd Page*, U. S. Deputy Mineral Surveyor, and sworn to before me this 10th day of *February* 1888.

[Seal.]

Appleton J. Ide,
Notary Public.

The Preliminary Plat "C." and Field Notes "D." containing, besides what are strictly the Field Notes, also the memoranda of Improvements, list of helpers, &c., with certificate and affidavit as above given, are then forwarded to the Surveyor general, who compares the plat, reviews the notes, &c., and if errors appear, as they often do, or if he cannot make the connections agree with his "connected plat," they are returned for correction; but if correct, the Field Notes are endorsed as follows:

(E.) APPROVAL OF SURVEY.

OFFICE OF U. S. SURVEYOR GEN'L, {
COLORADO. }

Denver, *February* 13, 1888.

The foregoing field notes of the survey of the claim of *Jesse White* upon the *Bear* lode, in *Alpine* Mining District, *Lake* County, Colorado, surveyed by *William Byrd Page*, U. S. Deputy

Mineral Surveyor, having been critically examined, the necessary corrections and explanations made, the said field notes and the surveys they describe are hereby approved.

ONEY CARSTARPHEN,
U. S. Surveyor General for Colorado.

The Field Notes "D" endorsed with the official approval "E" are then bound and kept permanently for reference in the Surveyor-General's office after he has caused to be made from them

(F.) THE FINAL PLAT,

of which the original is retained in the Surveyor General's office, one copy is forwarded by the Surveyor-General to the proper local Land Office and two copies are forwarded to the Deputy Surveyor.

The original and each copy of the final plat "F" is certified by endorsement thereon, as follows :

(G.) SURVEYOR GENERAL'S APPROVAL OF SURVEY AND
CERTIFICATE OF \$500 IMPROVEMENTS.

Date of (Amended) Location, *June 28, 1885.* Survey No. 5555, Leadville Land District.

Plat of the claim of *Jesse White* upon the *Bear* lode, *Alpine* Mining District, *Lake* County, State of Colorado, containing an area of 7.916 acres. Scale of 200 feet to the inch. Variation 15° 20' east. Surveyed by *Wm. Byrd Page*, U. S. Deputy Mineral Surveyor, February 8-9, 1888.

The original Field Notes of the survey of the claim of *Jesse White* upon the *Bear* lode from which this plat has been made, have been examined and approved, and are on file in this office, and I hereby certify that they furnish such an accurate description of said mining claim as will, if incorporated into a patent, serve fully to identify the premises, and that such reference is made therein to natural objects, and permanent monuments as will perpetuate and fix the locus thereof. I further certify that the value of the labor and improvements placed thereon by the applicant or his grantors, is not less than five hundred dollars; and that said improvements consist of *The discovery shaft, an incline, a shaft house, an interest in an adit, and a drift*, as appears

by the affidavit of the Deputy Surveyor. And I further certify that this is a correct plat of said mining claim made in conformity with said original field notes of the survey thereof.

ONEY CARSTARPHEN,

U. S. Surveyor General for Colorado

U. S. Surveyor General's Office, Denver, Colorado,

February 13, 1888.

Along with the two copies of the Diagram "F," with its endorsement "G," the Surveyor General forwards to the surveyor for claimant the

(H.) TRANSCRIPT OF FIELD NOTES, *otherwise called*
"APPROVED FIELD NOTES."

This instrument "H" is verbatim the same as "D," preceded by the words "Transcript of," including all its exhibits, but not the Surveyor General's Certificate "G." Instead of the certificate "G," such transcript is certified as follows:

(I.) SURVEYOR GENERAL'S CERTIFICATE TO TRAN-
SCRIPT. "H."

I certify that the foregoing transcript of the field notes of the survey of the mining claim of *Jesse White*, upon the *Bear* lode, situate in *Alpine* Mining District, County of *Lake*, and State of Colorado, has been correctly copied from the original notes of said survey on file in this office; that said field notes furnish such an accurate description of said mining claim as will, if incorporated into a patent, serve fully to identify the premises, and that such reference is made therein to natural objects and permanent monuments as will perpetuate and fix the locus thereof; and that the value of labor and improvements upon the said mining claim, placed thereon by said claimant or his grantors, is not less than Five Hundred Dollars, as sworn to by the Deputy Surveyor, and that said improvements consist of *the discovery shaft, an incline, a shaft house, an interest in an adit, and a drift*.

I further certify, that the plat thereof filed in the U. S. Land Office at *Leadville*, is correct, and in conformity with the foregoing field notes.

ONEY CARSTARPHEN,

U. S. Surveyor General for Colorado.

U. S. SURVEYOR GENERAL'S OFFICE,

DENVER, COLORADO,

February 13, 1888.

These matters are all preliminary to the Application for Patent *proper* which is made to the local Land Office, these proceedings in the Surveyor General's office being necessary because each lode claim must be separately sur-

veyed, whereas in case of agricultural land a party simply enters upon a particular quarter section which has been already surveyed and platted.

DELIVERY OF PAPERS TO THE ATTORNEY.

The above transcript "H," received from the Surveyor which is generally termed the "Approved Field Notes," the deputy then delivers, along with the plats or diagrams received from the same office, to the attorney for the claimant, who is supposed to supervise the signing and filing of all the subsequent papers, and takes charge of the application from this point, although in fact the further papers and the superintendence of the posting, etc., are frequently left in charge of the deputy.

RESPECTIVE DUTIES OF SURVEYOR AND ATTORNEY.

The Deputy Surveyors are not allowed to act as attorneys. *Sickel* 567. *See p. 232.* The surveyor's services seem properly to end with the preparation of papers for the Surveyor General's Office and the reception of papers from that office. These latter, he turns over to the attorney, who makes out or supervises all papers intended for the Land Office. The Deputy's aid should not, however, be discarded pending the application, as with many of the forms he is more familiar than attorneys generally are. The profession ought not to object to their filling out the ordinary blanks, especially in cases where no adverse claim is expected, nor to their attending to posting, publication, proofs of citizenship, etc., if they will not attempt to make out the location and re-location certificates.

—which are strictly legal papers,—the interference of the surveyors in these matters, generally leaving applicants in a position where they seriously need an attorney's advice, if not already too late to be of service. And in cases of Land Office contest any interference by the Surveyor would be officious and reprehensible.

The claimant or his attorney then prepares in triplicate, his

(K.) NOTICE OF APPLICATION FOR U. S. PATENT.

NOTICE OF APPLICATION FOR U. S. PATENT.

Survey No. 5555.

U. S. LAND OFFICE, *Leadville*, March 1, 1888.

Notice is hereby given that in pursuance of the Act of Congress approved May 10, 1872, *Jesse White* whose postoffice is *Silver Cliff, Custer County, Colorado*, has made application for a patent for 1365 (1*) linear feet on the *Bea* lode, bearing *silver*, the same being 230 feet southwesterly and 1135 feet northeasterly from discovery shaft thereon, with surface ground 300 feet in width, situate in *Alpine* Mining District, Lake County, State of Colorado, as described by the official plat, herewith posted, and by the field notes on file in the office of the Register of *Leadville* Land District, Colorado, as follows, viz:

Beginning at corner No. 1, whence the W. $\frac{1}{4}$ cor. Sec. 22, T. 11 S. R. 81 W. of the 6th Principal Meridian, bears S. $79^{\circ} 34'$ W. 1378.2 ft.

Cor. No. 1, Gottenburg lode (unsurveyed). Neals Mattson, claimant, bears S. $40^{\circ} 29'$ W. 187.67 ft.

A pine 12 ins. dia. marked B. T. 1-5555 bears S. $7^{\circ} 25'$ E. 22 ft.

Mount Ouray bears N. 11° E.

Hiawatha Peak bears N. $47^{\circ} 45'$ W.

Thence S. $21^{\circ} 45'$ W. 1242 ft. to trail, course N. W. and S. E. 1365 2 ft. to cor. No. 2, whence cor. No. 1, sur. No. 2560, Carnarvon lode, bears S. $3^{\circ} 28'$ E. 116.6 ft..

North end of bridge over Columbine creek bears S. $65^{\circ} 15'$ E. 650 ft. Thence N. $65^{\circ} 15'$ W. 300 ft. to cor. No. 3, whence a spruce 16 ins. dia. blazed and marked B. T. 3-5555 bears S. 58° W. 18 ft. Thence N. $21^{\circ} 45'$ E. 1365.28 ft. to cor. No. 4, the place of beginning; containing 7.916 acres (exclusive of survey No. 2560 and the Gottenburg lode), and forming a portion of the west $\frac{1}{2}$ of section 22 in township 11 S., range 81 W. of the Sixth Principal Meridian, said location being recorded in vol. 77, page 318 of the records of Lake County, Colorado. Adjoining claimants, on this lode, none; on other lodes, Neals Mattson on the north-west with the Gotten-

1*.--The *Bea* is supposed to be a 1500 foot location cut down to 1365 feet by end-lining on a prior survey, under section 14, p. 243.

burg lode and David Davis on the south, with the Carnarvon lode the nearest known claims.

Jesse White.

Witness:

EMILIO D. DESOTO,
FRED C. KEENEY.

One of the notices, "K," should be at once posted on the claim along with one of the certified diagrams received from the Surveyor General, the two papers being loosely attached, ~~or~~, as more usual, placed side by side, in some conspicuous place on the claim (usually at the discovery shaft) in presence of two persons (not necessarily disinterested witnesses) who attach their signatures as shown upon the form "K."

Another of the notices "K" is attached to

(L.) PROOF OF POSTING NOTICE AND DIAGRAM ON
THE CLAIM.

STATE OF COLORADO, } ss.
Lake County. }

Emilio D. DeSoto and *Fred C. Keeney*, each for himself, and not one for the other, being first duly sworn according to law, deposes and says, that he is a citizen of the United States, over the age of twenty-one years, and was present on the *second* day of *March*, A. D. 1888, when a plat representing the claim of *Jesse White*, and certified as correct by the United States Surveyor General of Colorado, and designated by him as lot No. 5555, together with a notice of the intention of said *Jesse White* to apply for a patent for the mining claim and premises so platted, was posted in a conspicuous place upon said mining claim, to wit: upon the outside of the door of the shaft house at the discovery, where the same could be easily seen and examined. The notice so conspicuously posted upon said claim is herewith attached and made a part of this affidavit.

Emilio D. DeSoto.
Fred C. Keeney.

Subscribed and sworn to before me this *second* day of *March*, A. D. 1888, and I hereby certify that I consider the above deponents credible and reliable witnesses, and that the foregoing affidavit and notice were read by each of them before their signatures were affixed thereto and the oath made by them

[SEAL]

Appleton J. Ide.
Notary Public.

The form "L" is subscribed by the posting witnesses. The applicant (unless he is one of his own posting witnesses) does not sign it. One witness is not sufficient.

The third notice, "K," signed by the applicant, but not by the witnesses, goes with the second of the plats received from the Surveyor General (page 254), when it is sent with the first set of papers to the Land Office, where the Register attaches his attesting signature, and it will remain posted in the Land Office, while its fellow notice and plat are standing on the claim during the period of publication.

The next paper to be prepared is the

(M.) APPLICATION FOR PATENT.

STATE OF COLORADO, }
Lake County. } ss.

Application for patent for the *Bear Lode Mining Claim*. To the Register and Receiver of the U. S. Land Office at Leadville, Colorado :

Jesse White, whose postoffice address is *Silver Cliff, Colorado*, being duly sworn, according to law, deposes and says : that in virtue of a compliance with the mining rules, regulations and customs, by himself (and his grantors), he, the applicant for patent herein, has become the owner of and is in the actual, quiet and undisturbed possession of 1500 linear feet of the *Bear* vein, lode or deposit, bearing silver, together with surface ground 300 feet in width, for the convenient working thereof as allowed by local rules and customs of miners, said mineral claim, vein, lode or deposit and surface ground being situate in *Alpine Mining District*, County of Lake and State of Colorado, as more particularly set forth and described in the official field notes of survey thereof, hereto attached, dated February 10, A. D. 1888, and in the official plat of said survey, now posted conspicuously upon said mining claim or premises, a copy of which is filed herewith. Deponent further states that the facts relative to the right of possession of himself to said mining claim, vein, lode, or deposit and surface ground so surveyed and platted, are substantially as follows, to wit: The *Bear* lode was discovered on or about the *fourth* day of *July*, A. D. 1885, by *James A. McFadden*, who afterwards, and before the *first* day of *August*, A. D. 1885, completed a location of the same as a mining claim of the length and width aforesaid, having substantially located the same and otherwise complied with all local rules and regulations, the laws of the State of Colorado and of the United States relating to mining claims.

The said discoverer and locator conveyed all his interest in the claim to *John McCombe* and *Frank M. Taylor*, who, by divers intermediate conveyances transferred the same to applicant, who thereupon took possession and is the sole present owner, all of which will more fully appear by reference to the copy of the original record of location and the abstract of title herewith

filed; the value of the labor done and improvements made upon said *Bear Lode Mining Claim* by the applicant (and his grantors) being equal to the sum of five hundred dollars. Said improvements consist of discovery shaft, an incline, shaft house, a drift and *one-third interest in adit* (but expressly excepting and excluding from this application all that portion of the ground embraced in mining claim or survey designated as lot No. 2560 and the claim of Neals Mattson on the Gottenburg lode) in consideration of which facts, and in conformity with the provisions of Chapter Six of Title Thirty-two of the Revised Statutes of the United States, application is hereby made for and in behalf of said *Jesse White* for a patent from the United States for the said *Bear Lode Mining Claim*, vein, lode or deposit and the surface ground so officially surveyed and platted.

Jesse White.

Subscribed and sworn to before me this *fifth* day of *March*, A. D. 1888, and I hereby certify that I consider the above deponent a credible and reliable person, and the foregoing affidavit, to which was attached the field notes of survey of the *Bear Lode Mining Claim*, was read and examined by him before his signature was affixed thereto and the oath made by him.

[SEAL.]

Daniel Sayer, Notary Public.

Where an application is presented in the Land Office before the plat and notice have been posted on the claim as required by R. S., § 2325, such application has been held void *ab initio*. 9 L. O. 114.

This application M is attached to the transcript H. This transcript H is commonly styled "The Approved Field Notes."

At the same time there should be prepared:

N.—The abstract of title.

O.—The proof of citizenship.

P.—Proof of non-abandonment.

Q.—The publisher's agreement.

R.—The publication notice—which with those already referred to, completes the first set of papers, to-wit:

(N.) ABSTRACT OF TITLE.

STATE OF COLORADO,)
County of *Lake*.) ss.

I, *Edward Dale*, Clerk and ex officio Recorder of said County, do hereby certify that the foregoing is a true, full and correct abstract of the title to the *Bear Lode* therein described, as the same appears of record in said office.

and shows all location certificates, deeds or other instruments appearing of record purporting to convey or affect the same.

Witness my hand and the seal of said County, this 12th day of March A. D. 1888.

[COUNTY SEAL.]

EDWARD DALE, Recorder.

It should contain a memorandum of the location certificate, including any amended location certificates, and the usual memoranda of the deeds and other instruments appearing of record in his office, and should be brought up to and *include* the date of the application.

The abstract often contains a copy of the location certificate, and in such case the recorder's certificate should be varied to state that it contains a true copy thereof; but the better practice is to mail with the application papers a certified copy of the location certificate (or certificates if there be more than one), *separately*, and after the filing of the "application papers" but during the period of publication to send the abstract proper, which in such case will contain only the memorandum of the location certificate with names, dates, etc., in the same manner as the memoranda of the separate deeds. This precaution is to make the abstract *certainly include* the date of the filing of the application.

When the applicant for patent is the original locator himself, (and there have been no transfers of title), he should file with the application papers a certified copy of his location certificate, and during the period of publication as before advised, should forward an abstract containing a memorandum of such location certificate certified as follows:

STATE OF COLORADO, } ss.
County of *Lake*.

I, *Edward Dale*, Clerk and ex-officio Recorder of said County do hereby certify that the foregoing is a full, true and correct abstract of the title to the *Bear Lode* therein described, as the same appears of record in said office, and that there are no deeds or other instruments appearing of record purporting to convey or affect the same except the certificate of location therein referred to.

Witness my hand, etc., *as above*.

The abstract should show title in the applicant.

Rule 32, p. 214. If it show title in several co-owners all such co-owners should join as applicants. If it show that there were co-owners who had been forfeited out for non-performance of annual labor, this is considered equivalent to an abstract showing transfer by deed from them to the applicant. A break in the chain of title behind a re-location made in the usual form to take up abandoned claims may be disregarded.—Gold Dirt Lode. 10 L. O. 119. Where names of co-tenants are inadvertently omitted in the application they have been allowed to be supplied and the patent issued to all.—In re J. Q. S. Lode 10 L. O. 206; but this is *irregular*.

When a co-owner for any cause is not joined he may adverse.—10 L. O. 206.

(O.) PROOF OF CITIZENSHIP.

STATE OF COLORADO, } ss.
County of *Lake*.

Jesse White being first duly sworn according to law, deposes and says that he is the applicant for patent for the *Bear Lode* Mining Claim, situate in *Alpine* Mining District, County of *Lake*, State of Colorado*; that he is a native born citizen of the United States, born in the County of ——— State of *New York*, in the year ——— and is now a resident of *Silver Cliff*, State of Colorado.

Jesse White.

Subscribed and sworn to before me this 12th day of *March*, 1888.

[Seal.]

Frank Shaw,
Notary Public.

When the applicant is not a native citizen, the form after the* will proceed:

That he is a naturalized citizen of the United States; took out his final naturalization papers in the *Circuit Court of the United States at Denver, Colorado*, on the first day of *May*, 1880, and is now a resident of *Kokomo*, State of *Colorado*.

If the applicant has not taken out his final papers, it will proceed:

That he declared his intention of becoming a citizen of the United States in the *Circuit Court of the United States at Denver, Colorado*, on the first day of *May*, 1880, and is now a resident of *Cheyenne*, Territory of *Wyoming*.

If the applicant claims under his father's naturalization, it will proceed :

That he is a naturalized citizen of the United States, born in the *Republic of Peru*, and that he came to the United States a minor, under the age of 21 years, and has ever since resided in the United States, and that his father took out his final papers and became a naturalized citizen of the United States* during the minority of affiant, whereby affiant became a naturalized citizen under the terms of Section 2172 of the Revised Statutes of the United States, and is now a resident of *Aspen*, County of *Pitkin*, State of *Colorado*.

Or, if the applicant be a native Mexican, born prior to February 2, 1848, it will proceed :

"That he is a citizen of the United States, born prior to the second day of February, A. D. 1848, in that part of the Republic of Mexico which was ceded to the United States by the treaty of that date, known as the treaty of Guadalupe Hidalgo, and that he elected to become a citizen of the United States under said treaty, and has ever since resided within the United States of America, and is now a resident of *Conejos*, County of *Conejos*, State of *Colorado*."

Serving in the Army or Navy does not complete citizenship of itself. Soldiers must comply with Section 2166 and Sailors with Section 2174 of the Revised Statutes.

It was formerly necessary to attach a copy of the naturalization papers to the affidavit, but this is no longer required. *Sickel* 492. 3 L. O. 68.

Citizenship of Corporation.—A corporation must file a copy of its charter or articles of association, certified to by the Secretary of State of *Colorado*, whether it be a Domestic corporation or a corporation of some other State doing business in this State.

*NOTE. State when and where and in what court, in compliance with Rule 80, page 223.

Where there are several applicants each makes his own affidavit of citizenship.

Affidavit, where made.—By Act of April 26, 1882, the affidavit of citizenship, where the applicant resides outside of the Land District, may be made anywhere in the United States, before any Notary or Clerk of Court of Record where the applicant may reside or happen to be found.

Proof by two Witnesses.—When the affidavit of the applicant cannot be procured the Land office will allow proof of his citizenship by the affidavits of two disinterested witnesses. *Rule 81, p. 224.*

(P.) PROOF OF NON-ABANDONMENT.

By circular of the General Land Office of March 24, 1887, it was ruled that the Register should require upon each application satisfactory proof of compliance with the annual labor law.—R. S. § 2324.

The circular is obscure and no specific form to apply to all cases can be prepared from it but the following form will cover all the ordinary cases. It should be made by the applicant or his agent corroborated by two disinterested witnesses.

STATE OF COLORADO, } ss.
County of *Lake*

Before me, the subscriber, a Notary Public in and for said County, personally appeared *Jesse White*, who, being duly sworn, saith that he is the applicant for patent upon the *Bear Lode* Mining Claim in *Alpine* Mining District, County of *Lake*, State of Colorado, Survey Lot No 5555; that he is the owner of said claim and has not abandoned the same and that 1* he has performed at least *one hundred dollars* worth of

1* Or, that he resumed work on the 2nd day of *January*, A. D. 1888, with the bona fide intention of completing one hundred dollars worth of labor or improvements during the current year.

labor upon said claim during the year 1887, and that said labor consisted of *sinking the discovery shaft from a depth of ten to a depth of twenty-two feet.*

Jesse White.

Sworn and subscribed before me this 2nd day of March, A. D. 1888.

[Seal.]

Appleton J. Ide,
Notary Public.

STATE OF COLORADO, }
County of Lake. } ss.

Before me, the subscriber, personally appeared *John McCombe* and *Charles T. Limberg*, who being duly sworn say that they reside in *Leadville*, in said County, are citizens of the United States, and are familiar with the *Bear Lode Survey Lot No. 5555* described in the foregoing affidavit of *Jesse White*; that they have no interest in the application for patent upon said lode, and are familiar with the facts stated in said affidavit, and know of their own knowledge that the work therein mentioned was done as therein stated.

John McCombe, }
Chas. T. Limberg, } Witnesses.

Subscribed and sworn to before me this 2nd day of March, A. D. 1888, and I hereby certify that the foregoing affidavit was read to (or by) the above named *John McCombe* and *Chas. T. Limberg* previous to their names being subscribed thereto, and that deponents are credible witnesses to whom full faith and credit should be given.

[Seal.]

Appleton J. Ide,
Notary Public.

(Q.) PUBLISHERS CONTRACT.

We, the undersigned, Publishers and Proprietors of the *Leadville Herald-Democrat*, a weekly newspaper, published in *Leadville*, Lake County, State of Colorado, hereby agree to publish a notice dated U. S. Land Office, *Leadville, Colo.*, March 1, 1888, required by act of Congress, approved May 10th, 1872, of the intention of *Jesse White* to apply for a patent for *his* claim on the *Bear Lode*, situated in Alpine Mining District, County of Lake, State aforesaid, and to hold the said *Jesse White* alone responsible for the amount of our bill for publishing the same.

And it is hereby expressly stipulated and agreed, that no claim shall be made against the government of the United States, or its officers or agents, for such publication.

WITNESS our hands this fourth day of March, A. D. 1888.

C. C. DAVIS & Co.

In what Newspaper.— The notice must be published in a newspaper to be by the *Register* designated as published nearest to the claim. (R. S. § 2325.) When there are two

or more in the nearest town either may be designated. *Cameron v. Seaman*, 13 *M. R.* 584; 10 *L. O.* 376. And the practice of the Register, where two or more local papers in the same town are published, is to designate that one which the attorney may suggest. The distance is to be calculated not by an air line, but by the most usually traveled route. The notice must be continued in the same paper and cannot be shifted from the daily to the weekly edition. 3 *L. O.* 15.

What Constitutes a Newspaper.—It must be a reputable newspaper of general circulation. 10 *L. O.* 360; 376. The Register has a discretion in deciding what constitutes such a newspaper. 8 *L. O.* 156; 3 *L. O.* 36.

Manner and Period of Publication.—The notice *R* must be published for 61 days in a daily, or 10 consecutive times in a weekly paper, and while the notice is going through its newspaper publication, it also stands posted on the claim, and tacked to the bulletin of the Land Office. Each of these methods of publication is mandatory and essential.

(R.) PUBLICATION NOTICE.

This is verbatim the same as *K*, and amounts to a fourth copy of *K* except that it is not signed by the applicant but is forwarded in blank to the land office where it receives the application number, is signed by the Register and returned by him to the attorney for claimant or direct to the printer.

It should contain at the foot a memorandum of the date of the first and last publication.

First Set or "Application" Papers.—The above mentioned papers, constituting the following list, to-wit:

F.—The final plat—one copy,

H.—The approved field notes,

K.—The copy intended for posting in land office,

K.—Second copy with L proof of posting attached,

M.—Application for patent,

N.—Abstract of title, (See p. 259.)

O.—Proof of citizenship,

P.—Proof of non-abandonment,

Q.—Publisher's agreement,

R.—Publication notice—which complete the first set of papers commonly called the “application papers,” are all forwarded at one time by the attorney to the local land office.

Upon receipt of the application papers, accompanied by the filing fee of ten dollars, the Register gives the papers an application number, makes a record of the application in the nature of an index, attests the posting of the notice K in his office, affixing the date, and returns to the attorney for claimant the notice for publication R headed with the application number, or sends it direct to the proper paper for publication. The return of the publication notice to the attorney or paper is an implied approval of the publisher's contract and a sufficient designation of that paper.

RECAPITULATION.

It may be convenient to review the proceedings at this point.

The papers A to I, inclusive, have performed their office.

A, the request for survey; C, the preliminary plat; D, the field notes, and F, the final plat, remain with the Surveyor General.

B, the order for survey, remains in the hands of the deputy, being his voucher against the applicant for work done under it.

E, G, and I are mere certificates endorsed on other papers.

The transcript H (the approved field notes), has been attached to the application M, and both mailed to the local land office.

One copy of the plat F, has been forwarded by the Surveyor General to the local land office to be kept on file; one copy has been posted on the claim, and one copy forwarded to the local land office as one of the application papers.

One of the notices K, has been posted on the claim; one has been attached to the proof of posting; one has been posted in the land office, and one, R, remains to be published or is being published.

L, the proof of posting; M, the application; P, the proof of non-abandonment, and Q, the publisher's agreement, have been filed in the land office.

R, the publication notice, has been forwarded to the designated newspaper.

N, the abstract, and O, the proof of citizenship, have been filed, or if not, may be filed at any time pending the publication.

The Second Set, or "Final Entry" Papers, which remain to be filed after the publication is complete, consist of—

S. Proof of continuous posting.

T. Proof of publication.

U. Proof of sums paid.

V. Application to purchase, to-wit:

SECOND SET OR FINAL ENTRY PAPERS.

When the period of publication is complete, proof of the notice having remained on the claim and of the publication are made as follows:

(S.) PROOF THAT PLAT AND NOTICE REMAINED POSTED ON CLAIM
DURING TIME OF PUBLICATION.

STATE OF COLORADO, } ss.
County of *Lake*.

Jesse White being first duly sworn according to law, deposes and says, that he is the claimant of the *Bear Lode Mining Claim*, *Alpine Mining District*, *Lake County*, *State of Colorado*, the official plat of which premises together with the notice of his intention to apply for a patent therefor was posted thereon, on the *second* day of *March*, A. D. 1888 as fully set forth and described in the affidavit of *Emilio D. DeSoto* and *Fred C. Keeney* dated the *second* day of *March*, A. D. 1888, which affidavit was duly filed in the office of the Register, at *Leadville* in this case; and that the plat and notice so mentioned and described, remained continuously and conspicuously posted upon said mining claim from the *second* day of *March*, A. D. 1888 until and including the *fourth* day of *May*, A. D. 1888, including the sixty-three days' period during which notice of said application for patent was published in the newspaper.

Jesse White.

Subscribed and sworn to before me, this *10th* day of *May*, A. D. 1888, and I hereby certify that the foregoing affidavit was read to the said *Jesse White* previous to his name being subscribed thereto.

Appleton J. Ide, [Seal.]

Notary Public

This affidavit of continuous posting must be made by a party to the application or by the agent when the entire application is made under a power.—1 L. O. 178; 6 L. O. 92.

(T.) CERTIFICATE OF PUBLICATION.

(Copy of
publication notice
cut from paper
and pasted here.)

I, *O. C. Davis*, do certify that I am one of the proprietors of the *Leadville Herald-Democrat*, a newspaper published in *Leadville*, in the County of *Lake* and State of *Colorado*, and that the annexed notice was published in said paper once each and every week for ten consecutive weeks, the first publication being on the 2nd day of *March*, A. D. 1888 and the last publication being on the 4th day of *May*, A. D. 1888.

O. C. Davis.

The publisher's receipted bill is commonly attached to this blank.

Subscribed and sworn to before me this 10th day of *May* A. D. 1888.

Chas. H. Rose,

[Seal.]

Notary Public.

Together with these proofs of publication and posting the claimant forwards, under one of the instructions of the Department, the following :

(U.) PROOF OF SUMS PAID.

STATE OF COLORADO, }
County of *Lake*. } ss.

Jesse White having been first duly sworn according to law, deposes and says that he is a citizen of the United States, over the age of twenty-one years ; that he is the applicant for patent to 1500 feet upon the *Bear Lode*, in *Alpine Mining District*, *Lake County*, *Colorado*; that in the prosecution of such application he has paid the following sums of money, viz :

For office work in the Surveyor-General's office,	- - -	\$ 30
To <i>Wm. Byrd Puge</i> , Deputy Surveyor, for surveying and platting	- - - - -	50
To Register and Receiver, for filing application in Land Office,	- - - - -	10
To <i>C. C. Davis & Co.</i> , publishers of the <i>Leadville Herald-Democrat</i> , for publication of notice of application,	- - - - -	20
To the Receiver of the local Land Office, for land,	- - - - -	40

\$150

Jesse White.

Subscribed and sworn to before me this 10th day of *May*, 1888.

Appleton J. Ide,
Notary Public.

[Seal.]

These are the official costs only; it does not include Attorney's fees, Notary's charges, nor cost of Abstract. The total expense of patenting one lode, without mill site, varies from \$140 to \$250.

The filing of this paper, U, completes the pre-requisites of entry and payment except the formal application to purchase "V" and the Register's proofs "W" and "X."

(V.) APPLICATION TO PURCHASE.

*To the Register and Receiver
United States Land Office
at Leadville, Colorado.*

The undersigned, claimant under the provisions of the Revised Statutes of the United States, Chapter Six, Title Thirty-two and legislation supplemental thereto, hereby applies to purchase that *Mining Claim* known as the *Bear Lode*, located in the West Half of Section 22, in Township No. 11 S., Range No. 81, West of the 6th principal meridian, designated as Lot No. 5555, said Lot No. 5555 extending 1500 feet in length along said *Bear* vein or lode, but *expressly excepting and excluding* from this application all that portion of the ground embraced in mining claim or survey designated as Lot No. 2560, the *Carnarvon Lode*, and the claim of *Neals Mattson* on the *Gottenburg Lode*, and also all that portion of any vein or lode the top or apex of which lies inside of said excluded ground; said Lode Mining claim embracing 7.916 acres in the *Alpine Mining District*, in the County of Lake and State of Colorado, as shown by the survey thereof, and hereby agree to pay therefor *forty* dollars, being the legal price thereof. Dated Leadville, May 10, 1888. *Jesse White.*

I, *Thomas W. Burchinel*, Register of the Land Office at Leadville, Colorado, do hereby certify that the aforesaid Mining Claim or Lot No. 5555 as applied for above, is subject to entry by the above-named applicant; the area of said Lode Mining claim being 7.916 acres, and the legal price thereof forty dollars.

May 12, 1888

Thos. W. Burchinel,
Register.

"V" does not need to be verified.

Register's Proof Completes Application.—Upon receipt of the final entry papers (S-V) accompanied by the purchase money (all other papers being regular) the Register makes his certificate that the notice K remained posted

on his bulletin during the period that its duplicates were being posted on the claim and published and makes his final certificate of entry.

(W.) REGISTER'S CERTIFICATE OF POSTING NOTICE FOR
SIXTY DAYS.

[*Attached to Bulletin copy of K.*]

UNITED STATES LAND OFFICE,

At Leadville, Colorado,

May 12, 1888.

I hereby certify that the official plat of the *Bear* lode, designated by the Surveyor General as lot No. 5555, was filed in this office on the 1st day of *March*, A. D. 1888. and that a notice, of which the attached notice is a copy, of the intention of *Jesse White* to apply for a patent for the mining claim or premises embraced by said plat, and described in the field-notes of survey thereof filed in said application, was posted conspicuously in this office on the 2nd day of *March*, A. D. 1888, and remained so posted until the 4th day of *May*, 1888, being the full period of sixty consecutive days during the period of publication as required by law; and that said plat remained in this office during that time, subject to examination, and that no adverse claim thereto has been filed.

Thos. W. Burchard,

Register.

It is important that this Bulletin Notice, K, should have been promptly posted. The Land Office hold that it is essential that the two notices, to-wit: by newspaper and by the bulletin should be concurrent, and in a case where the Bulletin was not posted till the 3d day of advertisement they allowed an adverse on the 63d day, holding that the double and contemporaneous publication was not until such day complete. The Bulletin need not be posted 63 days, but the *newspaper notice does not begin to run* until the Bulletin is posted. *In re Great Western Lode*, 14 L. O. 27.

(X.) REGISTER'S FINAL CERTIFICATE OF ENTRY.

Mineral Entry No. 2,000. } UNITED STATES LAND OFFICE
 Lot No. 5555. } At Leadville, Colorado,

May 12, 1888.

It is hereby certified that in pursuance of the provisions of the Revised Statutes of the United States, Chapter Six, Title Thirty-two and legislation supplemental thereto, *Jesse White*, whose post-office address is *Silver Cliff, Colorado*, on this day purchased that mining claim known as the *Bear Lode*, in the west $\frac{1}{2}$ of section 22, in township No. 11 S., range No. 81 W. of the 6th principal meridian, designated as Lot No. 5555, said Lot No. 5555 extending 1500 feet in length along said *Bear* vein or lode, expressly excepting *1 and excluding from said purchase all that portion of the ground embraced in mining claim or survey designated as Lot No. 2560, *Carnarvon Lode*; also the claim of *Neals Mattson*, on the *Gottenburg Lode*, and also all that portion of any vein or lode the top or apex of which lies inside of said excluded ground; said lode mining claim, as entered, embracing 7.916 acres in the *Alpine Mining District* in the county of *Lake* and State of *Colorado*, as shown by the plat and field-notes of survey thereof, for which the said party first above named this day made payment to the Receiver in full, amounting to the sum of *forty* dollars.

Now, therefore, be it known that upon the presentation of this Certificate to the Commissioner of the General Land Office, together with the plat and field-notes of survey of said claim and the proofs required by law, a patent shall issue thereupon to the said *Jesse White* if all be found regular.

Thomas W. Burchinel,
 Register.

The Receiver files his, the *original* Receiver's Receipt, with the papers and delivers or sends a *duplicate* to the claimant, and all the preliminary proceedings are now complete.

Receiver's Receipt.—This Receiver's Receipt should be kept by the claimant until notice from the local Land

*NOTE.—**Excluded Surveys.**—After the receipt of this circular at the local land office, all applications for mineral patents, applications to purchase, Register's final certificates of entry and Receiver's receipts must not only describe the ground claimed, but must state specifically what conflict or conflicts with other surveys, lots or claims are excluded, giving the number of each conflicting survey or lot. The published and posted notices must contain the same information. *Circular of Dec. 4, 1884. 11 L. O. 296.*

Office that Patent has arrived at such local Land Office, as its surrender is required before the Patent is delivered. If mislaid, proof of loss must be made

(Y.) AFFIDAVIT OF LOST RECEIVER'S RECEIPT.

STATE OF COLORADO, } ss.
County of *Gilpin*.

In the Central City Land District, Colorado.

Before me the subscriber, Register of said Land Office, personally appeared *John Best*, who being duly sworn saith that he is the *applicant for patent on the *Bretau* Lode Mining Claim Survey, Lot No. 5000 in *Gregory* Mining District, County of *Gilpin*, State of *Colorado*, and the same person who as such applicant made entry of said survey lot in the said Land Office on or about the *first* day of *June*, A. D. 1887. That on the date of said entry he received the Duplicate Receiver's Receipt therefor. That said Duplicate Receiver's Receipt is lost or mislaid. That deponent has made diligent search among his papers and cannot find the same, and cannot therefore surrender the same. That he never assigned or purported to assign said Receiver's Receipt and still remains the owner and in possession of the land therein described and is the party entitled to receive the patent therefor.

*Wherefore affiant asks that the patent to said survey lot be delivered to him without the surrender of said Receiver's Receipt upon this his affidavit of loss.

John Best.

Sworn and subscribed before me this *eighth* day of *January* A. D. 1888.

Richard Harvey, Register.

If the title has been transferred insert between the * *

"Owner by purchase of the *Bretau* Lode, etc., (description) That he purchased the same since the same was entered for patent by deed from the party who made the entry. That he never received the Duplicate Receiver's receipt from his vendor and does not know where the same can be found. That he has made diligent inquiry of the attorney and surveyor employed in the application for patent to said lode, who declare that they never had the same in their possession and that the whereabouts of affiant's vendor are unknown to affiant". Wherefore, etc.

After Entry.—All proceedings after entry are ministerial. The papers in the local Land Office, except the copy of Plat F, furnished by the Surveyor General, are forwarded to the General Land Office at Washington, and the Patent issues in due course usually arriving within two

years, the Department being behind in its office work; but this is upon the supposition that all the preliminary steps have been regular, and that the land was in fact open to entry—if material errors or defects are discovered after the Receiver's Receipt issues it may be, and often is, recalled and cancelled, and if land entered as agricultural is shown to be mineral at any time before patent issues, the same result follows.—*Scogin v. Culver*, 7. L. O. 23.

Corrections and Additional Proofs.—The entire series of papers are reviewed at Washington and if irregularities, such as errors in survey, insufficient proof of improvements, errors in affidavits, etc., are discovered, the local Land Office is notified from the General Land Office, and (unless the mistake is a fatal one) the claimant or his attorney is, by letter from the local Land Office, notified to supply the defect by further affidavit or certificate, as the case may be.

Government Price \$5 per acre.—The Application papers (p. 265) are accompanied by the money to be paid for the land, being \$5 for each acre or fractional part of an acre of the surface ground. The extreme limit of claim in Colorado being 1500 feet long by 300 feet broad, such claim contains 10 and 33-100 acres; the fractional acre being paid for as one acre, makes the claim equivalent to 11 acres. The amount paid will therefore vary between \$5 and \$55 for a single Lode location with no mill site. The price of placer ground is \$2.50 per acre.

Acreage of Lode Claims.—In computing this acreage, all interfering surveys which have been deducted, are excluded. The payment is based on the amount of clear surface ground covered by the survey, all prior official surveys being excepted.

Claim 1500 x 300 feet contains 10.33 acres.

"	1500 x 150	"	"	5.16	"
"	3000 x 50	"	"	3.44	"
"	1400 x 50	"	"	1.60	"
"	1600 x 50	"	"	1.83	"

Affidavits.—Where Made.—All affidavits made in support of the application must be made within the Land District. An exception to this is the publisher's affidavit (T) where the paper "nearest the claim" happens to be a newspaper in another Land District. Another exception is the affidavit of citizenship. Adverse claims may be verified in certain cases beyond the Land District. *See p. 295.*

Before What Officer—They may be made before a Notary Public or any officer authorized to administer oaths. Among such officers are the Register and Receiver of the proper district. Where allowed outside the district they should be taken before a Notary or the Clerk of a court of record. In all cases seal should be attached, and the Notary should add after his signature, "My commission expires Feb. 29, 1892." *Acts of 1887, p. 391.*

Affidavits, when there are Several Applicants.—Where the application is joint, any one co-owner may make all the affidavits required, on behalf of his co-owners as well as on his own behalf, except the affidavits of citizenship. *See p. 263.*

Joint Owners.—When a claim is owned in common, it is extremely convenient and especially advisable where it is owned in unequal interests, to have a quit-claim executed by the others to one of their number, placing the title, for the time being, in his name, the grantors securing themselves by title bond or otherwise.

Application by Agent. Amendment to R. S. § 2325.—***Where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be pat-

ented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits: *** *A. O. Jan. 22, 1880.*

It does not seem that under the above act a resident owner can apply at all by agent—unless at least temporarily absent. 7 L. O. 20. And the fact of absence should be recited in the power of attorney. In other words he cannot delegate the power, while he is present, by mere caprice or desire to avoid personal attention to the matter.

Where an application is by agency there must be a written power of attorney, which is recorded, and a certified copy is filed in the land office either separately or attached to the abstract. In the latter case it should be separately certified.

(Z.) FORM OF POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS, That I, *Henry E. Loane*, of *Baltimore*, State of *Maryland*, a citizen of the United States, do hereby constitute and appoint *Benjamin B. Lawrence*, of *Idaho Springs*, County of *Clear Creek*, State of *Colorado*, my Attorney in Fact, for me, and in my name, to make application for patent of the United States, in the proper Land Office, upon the *Horrid Drago* Lode Mining Claim, 1,500 feet in length by 150 feet in width, situate on *Republican Mountain*, in *Griffith* Mining District, County of *Clear Creek*, State of *Colorado*, and to make, or cause to be made, any and all surveys, relocations, affidavits, and all necessary papers which may be required in the prosecution of such application, or to perfect or protect the title thereto, and to do all acts and things in and about the premises which I myself, if present, could do, until patent is finally delivered. Also in case of Adverse Claim, I authorize him to employ counsel and take all measures necessary to defend against said Adverse Claim or suit in support thereof, either in the Land Office or in judicial proceedings, and in such judicial proceedings, to execute any bonds or other papers, and verify all proceedings, to and including Appeal or Writ of Error.

Witness my hand and seal, this *first* day of *July*, A. D. 1888.

Henry E. Loane. [Seal.]

Acknowledge according to form on page 146 and record, *ut supra.*

The Deputy Surveyor cannot accept such power nor act directly or indirectly as agent. *Rule 86, p. 225.*

In each affidavit signed by agent should be inserted, by way of precaution, the following clause:

"Affiant further saith that the said claimant is not a resident of the Land District in which said claim is situate, but resides at *Tallahassee, State of Florida*, and that affiant is the duly authorized agent of said claimant, and is 'conversant with the facts sought to be established by said affidavit.'"

Where a Corporation applies all papers are signed by the President, or other officer designated as stated in the next paragraph: but more usually, (and advisably) it executes the form "Z" to some resident person as agent. *See p. 262.*

Where it does not adopt the latter plan the Land Office practice requires proof that the officer purporting to act for the company was authorized to make the application. Such proof may consist of a copy of the resolution of the Board of Directors instructing some designated officer to apply for Patent to the claim or claims mentioned, certified by the secretary under the corporate seal.

Mill site Application.—Where a mill site is applied for separately it must be upon land occupied by mill or reduction works (*p. 129*). In such case the forms herein given are sufficient, changing the word lode to mill site, and adding the two forms next following. The price per acre is also the same (*p. 128*). Applications for mill sites alone are rare, they being usually applied for in connection with a lode.

(AA) NON-MINERAL AFFIDAVIT.

STATE OF COLORADO, *1 ss.*
County of *Clear Creek.*

Frank J. Marshall, and Andrew F. Curtis, each of lawful age and residents of *Georgetown*, in said County, being first duly sworn, each for himself and not one for the other, saith: That he is a citizen of the United States; that

he is well acquainted with the *Annie* mill site claim of *James Boyd*, situate in *Queens Mining District*, in said County, upon which said *James Boyd* has applied for patent of the United States, and knows the character of said described land, having frequently been actually upon the same; that his knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not to his knowledge within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin or copper, or any placer, cement, or other valuable mineral deposits, or any deposit of coal; that no portion of said land is claimed for mining purpose, under the local customs or rules of miners or otherwise; that no portion of said land is worked for minerals during any part of the year by any person or persons; that said land is essentially non-mineral land, and that he has no interest whatever in said claim or in said application for patent.

Frank J. Marshall,
Andrew F. Curtis.

Verification as in Form CC. The claimant also files his own affidavit to the same effect. *Rule 75, p. 223.*

Where a mill site is applied for in connection with a lode a second affidavit substantially according to the following form is required. 13 L. O. 159.

(BB.) PROOF OF MILL SITE USED FOR MINING (OR MILLING)
PURPOSES.

STATE OF COLORADO, }
County of *Garfield*. } ss.

Before me the subscriber, a Notary Public in and for said County, personally appeared *C. N. Greig*, (claimant), and *Harry Evans* and *James W. Ross* (witnesses), who being duly sworn, say each for himself and not one for the other, that he is a citizen of the United States and resides in said County. That he is familiar with the *Gagool* Mill site, Survey Lot No. 6666 B, for which the said *C. N. Greig* has applied for Patent in the United States Land Office at *Glenwood Springs*, Colorado. That the ground embraced in said survey is used or occupied by said claimant for mining purposes, to-wit: as a dump for the *Quaternary Lode*, and contains an ore house used in the working of said lode; also a boarding house used by miners engaged in working said lode; also a tramway and cornish jig used in operating said Lode (etc., as the case may be).

And the said *Harry Evans* and *James W. Ross*, severally, say that they have no interest whatever in said mill site or in the application for patent therefor.

C. N. Greig.
Harry Evans.
James W. Ross.

Verification as in form CC.

The improvements must be in the nature of mills flumes, ditches, or other things incidental to milling or mining. Buildings and roads not used for such purposes cannot be considered; otherwise if they are so used; trails off the claim, used for carrying ore, have been accepted as part of the improvements. 14 *L. O.* 209.

It is always advisable to apply for a mill site in connection with a lode claim: and in applying for a lode patent, a mill site can be included, and surface for building purposes readily acquired at a cost of \$50 less than if separate applications are made. *See pages 128-130.*

The lode is always distinguished as Survey Lot A — the mill site by the same number with the addition of "B." The mill site may be in another Mining District or in a section different from that containing the lode.

In such applications there must be a plat, and notice K posted on both lode and mill site; but if the notice has been not posted on the latter owing to excusable mistake, it has been disregarded. 14 *L. O.* 52; 151.

A mill site is not allowed to abut against the end line of a lode claim (9 *L. O.* 188) unless there be special proof that, notwithstanding the presumption in such case, the land is *not* mineral and the lode does *not* continue through it. 7 *L. O.* 179.

Two mill sites not containing together more than 5 acres may be included in one application. 11 *L. O.* 102.

The Land Office distinguishes between a mere water right and a mill site. 13 *L. O.* 110. The use of a spring is not a mill site occupation. *Id.* 197.

PLACER PATENT.

Lodes and Placers Distinguished.—Only metaliferous deposits in place are considered lodes under the mining act. 9 *L. O.* 148. Everything else of a mineral

character, *i. e.*, lands containing a mineral substance rendering them of more value for the extraction thereof than for surface purposes is treated as placer ground. The rulings to this effect are cited on pages 117-118. In addition to cases there given it has been ruled that lime-stone for lime-kilu purposes may be located as placer ground. 9 L. O. 5. Mica may be entered as a mining (presumably a placer) claim. 2 L. O. 131. Iron may be lode or placer, according to the nature of the deposit. Coal and Salines come under special laws.

Placer claims require a material subdivision into—

- (1) Claims located on unsurveyed lands;
- (2) Claims located by adopting the Governmental subdivisions of lands already surveyed.

PLACER PATENT ON UNSURVEYED LANDS.

In applying for patent on a placer claim located upon unsurveyed lands the foregoing forms, with obvious alterations will suffice.

In addition the Surveyor General's office requires a descriptive survey, based on L. O. Circular, September 23, 1882, found in 9 L. O. 130, and the Land Office requires proof that the claim contains no known lodes, excepting, of course, such as are especially applied for in the application itself or recognized as the property of others and excepted therefrom. The descriptive report to the Surveyor General the deputy makes out without special instructions on receipt of "B," the order for survey. See rule 43, p. 238. The form of descriptive report is given under Applications for Patent by Governmental Subdivisions, page 284.

Where a placer contains known lodes owned by the applicant, they are applied for as parcel of the

placer application and are specially designated on the survey by their names but without separate numbers and platted each with a width of 50 feet, or with the full width if so located, and the claimant elects to survey them for such full width, paying the lode price for such full width. If such lodes have never been previously located a formal discovery and record of the same should be made and abstract filed the same as for the placer.

Where a lode runs through a placer which has been already patented without reference to such lode, the lode owner applies for survey and patent over the same ground, (5 L. O. 5) but is limited to 50 feet width. 10 L. O. 18; 9 L. O. 211; 13 L. O. 39. The prior placer patentee may (as the Land Office intimates) adverse, but if the lode was not known it should not be patented to the placer claimant because it is his already under his original placer patent, and we apprehend that the lode patent should issue on the lode claimant's *ex parte* showing, leaving the question of title to the courts. But if the lode claimant adverse pending the placer application the question can be determined in advance and patent issue to the proper parties in the first instance.

In requesting order for survey, name the lodes, *i e.*, insert in form "A" "*The Special Delivery Placer, including three known lodes to-wit: The Silence, The Security and The Celerity*" etc., and send copies of location certificate of each lode. See page 246.

Where the lode and placer do not touch they cannot go in the same application. 5 L. O. 162.

Staking Interferences.—Where a lode survey shows intersection of former surveys, these are noted in the field-book but not staked; but in placer applications all inter-

ferences are ordered by the department to be marked with stakes.

The survey being approved, the Surveyor General forwards to the Land Office and to the claimant the same papers which he forwards in the case of a lode claim, and in addition, to the claimant, a transcript of the descriptive report.

The claimant then posts, advertises and files—the same as in the case of a lode claim, with the addition of the following affidavit :

(CC.) PROOF THAT NO KNOWN VEINS EXIST IN PLACER CLAIM.

STATE OF COLORADO, } ss.
County of Pitkin.

William J. Chamberlain and *William Hoag*, each of lawful age and resident in *Aspen*, in the said County, being first duly sworn, each for him-self, and not one for the other, saith, that he is a citizen of the United States; that he is well acquainted with the *Keystone* Placer Mining Claim, situate in *Roaring Fork* Mining District, County of *Pitkin*, State of *Colorado*, claimed by *John Wardell* applicant for United States Patent therefor; that for many years he has resided near to, and is well acquainted with the character of said land, having frequently passed over the same; that his knowledge of said land is such as to enable him to testify understandingly in regard thereto, and that there is not, to his knowledge, within the limits thereof, any known vein or lode, of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin or copper, upon said claim or any part thereof, and further, that he has no interest whatever in the said placer claim.

John Wardell,
Wm. J. Chamberlain,
Wm. Hoag.

Subscribed and sworn to before me, this first day of May, A. D. 1888; and I hereby certify that the foregoing affidavit was read to the above named *William J. Chamberlain* and *William Hoag*, previous to their names being subscribed thereto, and that deponents are reputable persons, to whom full faith and credit should be given.

Mulford Van Hoebenbergh,
Notary Public.

[SEAL.]

The Placer Claimant must join in the foregoing affidavit or file a similar one. R. 59 p. 220.

APPLICATION FOR PATENT ON SURVEYED LANDS.

The language of the Congressional Act as to this class of claims is obscure, but it seems that where a placer deposit is found on surveyed lands, discovery, location and record must be made exactly as in the case of discovery on unsurveyed public domain except that instead of a description by metes and bounds the location certificate should describe it as the *north-east quarter of section 8 Tp. 10 &c.* using one name for each 20 acres and not claiming more than 160 acres by one record.

It is advisable to give it a name as in other cases.

Although already surveyed it should be staked, marking the stakes with the name of the claim and number of the corner to indicate the appropriation, replacing the government stakes if not there found, but we are not prepared to say that this staking is essential. The location and record being complete, in applying for patent the Surveyor-General's office does not require any request for survey, the ground being already surveyed; nor copy of the location certificate, because the reference to the governmental subdivision is sufficient.

The form A is therefore dispensed with and in its stead the following printed blank is in use:

(DD.) APPLICATION FOR ORDER FOR DESCRIPTIVE REPORT
ON PLACER.

GEORGETOWN, COLO., MAY 1, 1888.

*United States Surveyor-General,
Denver, Colorado.*

SIR:—I hereby make application for an order to be issued to *Albert E. Chase*, U. S. Deputy Mineral Surveyor, under provisions of circular of the General Land Office, approved September 23, 1882, to make an examination and file his descriptive report upon the claim of myself upon the *Hyena* Placer, located in *Spanish Bar* Mining District *Glear Creek* County, *Central City* Land District, embracing the N. E. $\frac{1}{4}$ of Section 8, Township 3, S. Range No. 73 West of the 6th Principal Meridian, in the State of Colorado.

I have deposited for office work on same \$5 to the credit of the Treasurer of the United States at the Denver National Bank (U. S. Depository,) with request that duplicate certificate be forwarded to you.

George W. Hall,
Claimant.

P. O. address Georgetown,* Colo.

On receipt of the above the Surveyor-General issues his

(EE.) ORDER FOR DESCRIPTIVE REPORT.

DEPARTMENT OF THE INTERIOR,

OFFICE OF U. S. SURVEYOR GENERAL,

Denver, Colorado, May 2, 1888.

To any U. S. Deputy Mineral Surveyor in the District of Colorado.

SIR: You are hereby directed to make an examination and file your descriptive report under provisions of the General Land Office Circular approved September 23, 1882, upon the claim of George W. Hall upon the Hyena Placer, located in Spanish Bar Mining District, Clear Creek County, Central City 1 and District, embracing the N. E. $\frac{1}{4}$ of Sec. 8, Township No. 3 S., Range No. 73 West of the 6th Principal Meridian, Colorado.

Oney Carstarphen,
U. S. Surveyor General for Colorado.

This descriptive report includes proof that \$500 improvements have been made on the claim: the Surveyor-General's transcript of the same includes the certificate to such effect. The following is the form:

(FF.) DESCRIPTIVE REPORT.

*Survey No. 6,000.

CENTRAL CITY LAND OFFICE.

Descriptive report on the claim of George W. Hall upon the Hyena Placer, in Spanish Bar Mining District, Clear Creek County, Colorado. Submitted by

A. E. Chase,
U. S. Deputy Mineral Surveyor.

(a) The soil is a black loam, varying from 3 to 6 inches in depth, underlaid with auriferous gravel. The timber consists of a scattering growth of spruce and yellow pine trees, and along the banks of the creek there is a dense growth of small willows.

*If on surveyed lands there is no survey number.

(b) Beaver creek, a small stream about 10 feet wide, runs in a north-easterly direction through the claim.

(c) The workings upon the claim consist of an open cut 90 feet long, 20 feet wide and 10 feet deep. Course N. 80° E. The center of the westerly end bears N. 5° W.; 30 feet from corner No. 4 a ditch 850 feet long, 2 feet wide and 18 inches deep, course north easterly, the head of which bears N. 3° E. 120 feet from corner No. 6. A shaft 3x6 feet, 10 feet deep, which bears from corner No. 4, N. 2° W. 75 feet, and a drift 3x6 feet, 18 feet deep which bears from corner No. 4, N. 37° E. 120 feet.

(d) This claim is located about three miles in a south-easterly direction from the town of Maysville, and one mile west of Clear Creek Junction.

(e) The Baker and Swansea lodes located about three miles in a northerly direction from this claim are the nearest well known lode claims. No lode has ever been discovered upon this claim or in the immediate vicinity.

(f) This claim is well adapted for placer mining purposes. Water has been brought from Beaver Creek to work the lower portion of the claim, and it can be brought from a point in the same creek about $\frac{1}{4}$ of a mile above to work the whole claim.

(g) The works or expenditures upon this claim, placed thereon by the claimant and his grantors, consist of an open cut 90 feet long, 20 feet wide and 10 feet deep. Course N. 80° E. The center of the westerly end bears N. 5° W. 30 feet from corner No. 4. Value \$350.00. A ditch 850 feet long, 2 feet wide and 18 inches deep the head of which bears N. 3° E. 120 feet from corner No. 6. Course northeasterly to the open cut mentioned above. Value \$125.00. A shaft 3x6 feet, 10 feet deep, which bears from corner No. 4, N. 2° W. 75 feet. Value \$30.

(h) There are no salt-licks, salt springs, mines nor mill seats upon this claim.

I, A. E. Chase, U. S. Deputy Mineral Surveyor, do solemnly swear that in pursuance of an order from *Oney Carstarphen*, Surveyor General of the public lands in the State of Colorado, bearing date the 2nd day of May, 1888, I have made a personal and thorough examination of the claim of *Geo. W. Hall* upon the *Hyena Placer*, in *Spanish Bar Mining District*, *Clear Creek County*, Colorado, and that the foregoing descriptive report is a true representation of the facts in the case.

A. E. Chase,

U. S. Deputy Mineral Surveyor.

Subscribed by said A. E. Chase, U. S. Deputy Mineral Surveyor, and sworn to before me this 4th day of May, 1888

[Seal.]

Jesse S. Randall,

Notary Public.

We hereby certify that we are personally familiar with the claim of *George W. Hall* upon the *Hyena Placer*, in *Spanish Bar Mining District*, *Clear Creek County*, Colorado, and that the

foregoing descriptive report of *A. E. Chase*, U. S. Deputy Mineral Surveyor, is in all respects to the best of our knowledge and belief, true and accurate.

Daniel Roberts,
Patrick McNulty.

Subscribed and sworn to by the above named persons before me this 4th day of *May*, 1888.

Jesse S. Randall,
Notary Public.

[Seal.]

OFFICE U. S. SURVEYOR GENERAL,
COLORADO.

Denver, *May* 6, 1888.

The foregoing descriptive report on the claim of *George W. Hall* upon the *Hyena* Placer, in *Spanish Bar* Mining District, *Clear Creek* County, Colorado, having been critically examined, is found to conform to the requirements of the circular from the General office, approved September 23, 1882.

Oney Carstarphen,
U. S. Surveyor General for Colorado.

The descriptive report having been received the Surveyor General returns his transcript of the same to the claimant or his attorney.

The attorney then makes out his notices, K, which (without any plat) describe the land by its governmental subdivisions.

These notices are posted in the Land Office and on the claim, and advertised, and the claimant proceeds in all further particulars the same as in application for patent on unsurveyed lands. There seem to be no variations in the procedure, except such as are necessarily implied, from the fact that the Government survey is adopted, and a particular quarter section or other series of subdivisions has become the claim and no order for survey, plat or field notes are required; and excepting further the Descriptive Report and non-mineral affidavit required on all Placer applications..

The transcript of the Descriptive Report, after he has made use of it for the preparation of his notices K, the attorney forwards to the local Land Office with the first set of papers.

Joinder of Several Lode Locations or Several Placers as one Claim.—In the case of the *S. Louis Co. v. Kemp*, decided in 1881 (101 U. S. 636; 11 M. R. 673), a Placer had been patented in excess of 160 acres. The Supreme Court sustained the patent, and in support of their decision asserted that a miner's *claim* might consist of several *locations*; that several contiguous locations being purchased by one man became his claim. They say: "Such is the general understanding of miners and the meaning they attach to the term." Even what seem to us the erroneous impressions of our court of last resort command respect, and its decisions are none the less law, even though they compel us to accept new meanings to the words of our language. In fact where claims under district rules were limited to 100 feet square or other small dimensions, it has been very common to buy up many such claims and record them as one location. The interpretation was, nevertheless, strictly within the province and range of judicial construction; and as to Placers the Congressional section is not clear as to what constitutes the limit of a claim. But the decision in no event applies to lodes. As to them the statute itself, Section 2320, limits and defines a lode claim in terms. The Land Office overlooking these distinctions and following the foregoing decision without reference to them, in regulating the practice in applying for patent, has ruled that any number of mining locations, lode or placer, which touch, constitute one claim and may be patented under one application and upon one set of \$500 improvements. 12 *L. O.* 214, 264, 288.

Such has become the usual practice, and it will stand until the abuses under it lead to either a reconsideration of it or to statutory amendments. *See p.* 118.

In the Central City Land District as many as 31 claims have been thus united in one application and when they run parallel, a cross location lying at right angles is made to unite them so as to comply with the ruling that they must be contiguous or touch.

If \$500 improvements are sufficient to patent any number of contiguous claims we do not know why \$100 in labor should not be sufficient for annual labor on the entire group; but the Land Office halts here with a distinction, and in the non-abandonment affidavit M requires proof of labor done on or for each claim, or resumed, for the entire group.

The courts have not yet to our knowledge passed upon this class of applications, nor do we assume that they could do so upon the trial of an ordinary adverse claim, but we have no hesitation in pronouncing them illegal, in the case of lode groups. Nevertheless, if perfected by patent (at least in the case of placers) the patent would doubtless be upheld until set aside by direct proceedings for that purpose.

Where several lodes are thus applied for, they receive only one survey-lot number, but the corners of all are numbered consecutively: *i. e.*, if the first named lode has four corners, the first corner of the second lode will be No. 5, etc. Where there is a placer with lode or lodes, the lode corners are numbered after those of the placer.

IMPROVEMENTS.

What Constitutes Improvements.—Under-ground workings, cross-cuts or tunnels (on or off the ground, provided they are held by applicant for its benefit, and are *bona fide* intended to cut it) buildings, roads, flumes, fixed machinery, &c., or the result of any other *bona fide* expenditures, constitute improvements.

Excepting labor which leaves no trace of itself, such as hoisting water, whatever counts for annual labor will count for the \$500 improvements. *See p. 57.*

Undivided interests in tunnels, etc., held in common with parties who are not applicants are allowed to count as parcel of the necessary \$500 improvements.

Purchased Improvements. — Abandoned Improvements.—Old improvements on the ground may be purchased from the rightful owners, and so enure to the benefit of the applicant. The deed conveying them should be a quit claim of all vendor's interest in the claim under the name by which patent is sought, and of all improvements thereon, &c., and where abandoned property is relocated or jumped, the old improvements do not count without such purchase. The Department in a circular has intimated that they could not even be purchased (*Copp, M. L.* 259,) but this is not an adjudication, and we do not consider it to be law.

Among placer improvements cannot be counted dwelling houses or other structures not associated with mining.

Improvements Completed Pending Application.—It is not essential that the \$500 worth of improvements should exist on the ground at the time of the survey. They may be completed at any time during the period of publication. In such cases the Surveyor General endorses diagram "F" with a certificate not containing the latter part of "G." The Deputy in his field notes describes such improvements as may exist, and adds, in substance: "These improvements are not worth \$500, it being the intention of claimant to complete the necessary amount during the sixty days publication." When completed the Deputy sends a special affidavit to the Surveyor General, who files it and forwards his certificate to the Land Office.

The General Land Office has ruled that the Surveyor General's certificate of \$500 improvements is a statutory requirement (R. S. § 2325) and must be filed strictly within the period of publication. 12 *L. O.* 130.

Mill Site Improvements.—*See p.* 279.

On application for several Claims.—*See p.* 287.

Where the Applicant Dies before Entry.—On filing proof of decease the papers are perfected either by an heir or the executor or administrator, and patent issues to "the heirs of" the applicant.

When he dies after entry the patent issues in the name of the deceased. 11 *L. O.* 100.

Application by Trustee.—Any party applying to make entry as *trustee* must disclose fully the nature of the trust and the name of the *cestui que trust*; and such trustee, as well as the beneficiaries, must furnish satisfactory proof of citizenship; and the names of beneficiaries, as well as that of the trustee, must be inserted in the final certificate of entry. *Rule 3, L. O. Circular June 8, 1883.*

Patent to Assignees.—On bringing up Abstract to date the Land Office have issued patents to purchasers from the entry-man. But as the deed carries the patented title this is not necessary; nor is it regular. The Land Office cannot be presumed to follow title after entry, and might by such procedure issue it to a party not entitled in equity to take it.

Application Without Record Title.—Where the title is old and complicated a party may without filing abstract, supply the same by affidavits under R. S. § 2332, as explained by Land Office Rules 65-70 (*p.* 220), that he has worked and possessed the claim for the limitation period of five years. (*p.* 199).

Possessory title to a lode claim held and worked for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, may, in the absence of any adverse claim, be established in the same manner as now allowed in placer claims, and indicated generally in paragraphs 67, 68 and 69, of the circular hereby amended. *Rule 8, L. O., Circular July 6, 1883*

Conflicting Applications.—Where an adverse is pending no adverse need be filed against a subsequent application. *Steel v. Gold Co.* 18 *Ner.* 80.

The Surveyor General may approve a second application over the first when the first applicant has failed to proceed in the Land Office. 7 *L. O.* 51. The later applicant files a certificate to such effect from the Land Office and procures order for survey excluding the conflict.

Rulings as to Posting.—The notice K must remain posted on the Land Office Bulletin during the whole period of 60 days. 9 *L. O.* 93.

Posting notice inside an *open* shaft house held to be in a "conspicuous place." 9 *L. O.* 113.

Miscellaneous Rulings on Patent Application.
—Where a lode claim crosses the boundaries of a land district apply in district where principal workings lie but the notice K should be posted in the Register's office of each district. 12 *L. O.* 130. When the land office is closed during the period of 60 days the time of closing should not be counted as part of the advertising period. 9 *L. O.* 93. A claim already patented cannot be made the basis of a second application for more surface. 9 *L. O.* 113.

Where application is begun in the wrong land district proceedings must be *de novo*, after error discovered. 12 *L. O.* 158.

A lode location need not necessarily be a parallelogram. 11 *L. O.* 132. But in such case it has no apex rights. *Stone Lode case*, 118 *U. S.* 196.

ADVERSE CLAIM.

Statutory Requirements. Period Fixed.—If no adverse claim shall have been filed with the Register and the Receiver of the proper land-office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter. *R. S. § 2325.*

Statutory Requirements. Oath. Nature. Extent and Boundaries Must be Shown. Operates as a Stay.—Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. *R. S. § 2326.*

An adverse claim must be made during the period of sixty days publication, which is construed to mean on or before the sixtieth day after the date of first newspaper publication, such date being *excluded* in the calculation. *See p. 265.*

The proceedings are as follows: the adverse claimant subscribes and verifies his

(GG.) ADVERSE CLAIM.

United States Land Office, at *Leadville*, Colorado:

In the matter of the application of *Jesse White* for a United States patent to the *Bear Lode* Mining Claim, situate in *Alpine* Mining District, County of *Lake*, State of Colorado.

To the Register and Receiver of the United States Land Office, and to the above named claimant:

Whereas, *Jesse White* (the applicant) did, on the *first* day of *March*, A. D. 1888, file in the District Land Office of the United States at *Leadville*, Colorado, a certain plat of a survey of a certain lode, together with his application for a United States patent for said lode, naming and calling the said lode in said plat and application the *Bear Lode*, situate in *Alpine* Mining District, County of *Lake*, State of Colorado; said survey and plat being designated as mineral survey No. 5555 and consisting of 1500 linear feet, together with surface ground 300 feet in width; and the

said *Jesse White* did, at the same time and place, give notice that he would apply for a United States patent for the above described lode and premises in substance as follows:

(*Here attach copy of newspaper publication.*)

And, Whereas, the first publication of said notice of said application appeared in the *Leadville Herald-Democrat*, a weekly newspaper published at Leadville, in said County and State, on the 2nd day of *March*, A. D. 1888.

Now, Therefore, I, *J. Brislin Walker*, a citizen of the United States over the age of twenty-one years, residing in and my post-office address being *Denver*, in the County of *Arapahoe*, in said State, do, on this first day of *May*, A. D. 1888, enter this, my protest, against the issuing of a patent to the said *Jesse White*, for his pretended claim upon the so-called *Bear Lode*, as set forth in his said plat and field notes, as aforesaid, for the following reasons, to-wit:

1. The surface ground and veins or lodes contained therein as set forth and described in the plat and field notes of the said *Jesse White*, or a great portion thereof, are not the property of the said applicant, neither is he entitled to hold the same under or by virtue of the local laws, rules and customs of miners in said mining district, the laws of the State of Colorado, or the Statutes of the United States relating to mining claims.

2. Because a great portion of the premises described in said plat and notice of said applicant, and claimed by him as the so-called *Bear Lode*, is claimed adversely, and is owned by this protestant, and is in fact a portion of the premises claimed and owned by this protestant as the *Elephant Lode*, as will appear by reference to an abstract of title herewith filed, made a part of this protest and marked exhibit A.

3. Because this protestant (and his grantors) have held, occupied and possessed a great portion of the premises set forth and described by the said *Jesse White* in his plat and notice of the so-called *Bear Lode*, long prior to the pretended discovery and location of the so-called *Bear Lode*: such occupation and possession of this protestant (and his grantors) having been under and by virtue of a full compliance with the local laws, rules and customs of said mining district, and the laws of said State, and of the United States, pertaining to mineral lands.

4. Because this protestant (and his grantors) have held, occupied and possessed all that portion of the so-called *Bear Lode*, as represented on the plat of a survey made by *Charles J. Moore* Deputy United States Mineral Surveyor and colored *red*, said plat of said survey being herewith filed, marked exhibit B, and made a part of this protest, and have held, occupied and possessed the same long prior to the pretended discovery and location of the so-called *Bear Lode*, and is the original discoverer and locator of said

Elephant Lode, (or is a *bona fide* purchaser for a valuable consideration, from or through the original discoverer and locator of said *Elephant* Lode, by conveyances,) as shown on said abstract. See page 216.

5. Because a valid discovery, Location and Record of said *Elephant* Lode was made by this protestant (or his grantors), in strict compliance with said local laws, rules and customs, and the laws of the State of Colorado and of the United States, and while the same was vacant mineral land of the United States, open to occupation long prior to any pretended Discovery or Location thereof by said *Jesse White* (or his grantors) and said *Elephant* Lode hath been occupied and possessed as aforesaid, ever since its discovery as aforesaid, by this protestant (and his grantors,) under and by virtue of such discovery, location and record.

6. Because the discovery shaft of the so-called *Bear* Lode was not of the legal depth of ten feet from the lowest part of the rim at the surface, as required by law at the date of the pretended record of the same, and has never been since sunk to that depth. 7, etc., 8 etc.

Therefore, this protestant enters this his protest against the issuance of a patent to the said *Jesse White*, for his claim upon the so-called *Bear* Lode.

J. BRISBIN WALKER.

STATE OF COLORADO, } ss
County of *Lake*. }

On this 1st day of *May*, A. D. 1888, before me, the subscriber, a Notary Public in and for said County, personally appeared the above-named *J. Brisbin Walker*, who being first duly sworn, saith that he is the adverse claimant named in the foregoing protest, and adverse claim above subscribed by him. That he has read the same and knows the contents thereof; that the same is true in substance and in fact; and that the said adverse claim is made in good faith and to protect his better and prior title.

J. BRISBIN WALKER.

Sworn and subscribed before me, this first day of *May*, A. D. 1888.
GEO. P. BROWN, N. P. [SEAL.]

To the above reasons others may be added where specific facts are known going to the invalidity of the claim sought to be patented; but in every case allege that the claims conflict and that the adverse claimant is owner of the conflicting area and veins, as in paragraph No. 2 of the above form. The first five paragraphs constitute a good statement of an adverse right according to the various Land Office rulings, and others are added only as precautionary.

Exhibit "A" is an abstract of title certified as in form "N" and should contain a copy of the Location Certificate. *See Form, p. 259.*

The failure to file the Abstract within the period of publication has been held not to be a fatal error; but no cautious Attorney will be willing to risk this ruling.

Exhibit "B" is a plat made by a U. S. D. M. Surveyor, showing the interference of the two claims, certified as follows:

I hereby certify that the above diagram correctly represents the conflict claimed to exist between the *Bear* Lode and the *Elephant* Lode as actually surveyed by me. And I further certify that the value of the labor and improvements on the *Elephant* Lode made by the adverse claimant (and his grantors) is not less than one hundred dollars.

Charles J. Moore, U. S. D. Mineral Surveyor.

Improvements.—The amount of improvements on the adverse claim is immaterial, but they are required by rule to show on the plat.—*p. 217.*

Separate Adverse Claims.—Where there are several *Applications* to be adverse by a single lode, a separate Adverse Claim with its Plat and Abstract must be filed in each case. *Copp M. L., 139*; and where the adverse claimant has several lodes with which he intends to adverse a single application, the better practice is to file an adverse on behalf of each lode, accompanied by its proper exhibits; but if he prefer to unite his several titles in a single adverse, we do not see how it could be rightfully rejected. In either case, only one suit in support is required.

Adverse Claim, Where and by Whom Verified.—An adverse claim is usually verified by the adverse claimant or one of the adverse claimants and within the land district.

But by act of April 26, 1882 (post p. 310) it may be verified by an agent or attorney in fact cognizant of the facts

stated. Such agent must make his verification in the land district. A corporation verifies either by its executive officer (president) or its agent thereto authorized. 1 L. O. 132.

And if the claimant is a non-resident or absent from the district and verifies it personally he may make such verification wherever he may be, before the clerk of any court of record or a notary public, anywhere within the United States.

In cases of emergency it is a legitimate expedient to have the intending adverse claimant convey to a third party within the district, who then makes and verifies the adverse claim precisely as if he were the real, as he becomes in fact, the legal, owner of the adversing claim. But since the act allowing verification by the adverse claimant beyond the district or the filing by an agent, this course need seldom be resorted to.

Form of Adverse and Verification by Agent.—

Proceed as in form GG to the last paragraph and insert:

Wherefore this protestant, by *Charles T. Linberg*, his duly authorized agent and attorney in fact who is personally cognizant of the facts herein stated enters this his protest against the issuance of a patent to the said *Jesse White* for his claim upon the so-called *Bear Lode*.

J. BRISBIN WALKER,

By *Charles T. Linberg*,

His agent and attorney in fact.

STATE OF COLORADO, }
County of *Lake*. } ss.

On this *first* day of *May*, A. D. 1838, before me, the subscriber, a Notary Public in and for said County, personally appeared the above named *Charles T. Linberg*, who being first duly sworn, saith that he is the duly authorized agent and attorney in fact of the above named *J. Brisbin Walker*, adverse claimant named in the foregoing protest and adverse claim above subscribed by affiant as will further appear by the copy of his power of attorney hereto attached marked exhibit C; that affiant has read the foregoing protest and adverse claim, and is cognizant of the facts therein stated, and that the same is true in substance and

in fact; and is made in good faith to protect the prior and better title of his said principal.

CHARLES T. LIMBERG,
Sworn and subscribed before me this first day of May, A. D.
1888. *Daniel Sayer*, Notary Public. [SEAL.]

By Co-owner.—A single co-owner may make and verify the adverse claim "*on behalf of himself and his co-owners*," which phrase should, in the form "GG," follow the name of the protestant wherever it occurs or where the context requires it, when an adverse is so made.

And it is held that one co-owner may adverse although another co-owner refuse to join him.

And one co-owner cannot withdraw his adverse so as to prejudice another who has joined with him.

Computation of Time.—The Department at one time ruled that when the publication was in a weekly newspaper, which requires 10 insertions, the Adverse could be filed within the period necessary to complete publication, which (excluding the first day) would bring it to the 63d day.

But by circular of January 14, 1884, they ruled that the period must be strictly limited to 60 days, excluding the first day, and this is the present holding. 10 L. O. 339.

To instance, where first publication was on June 1, they exclude the first day and count—

June 29 days;

July 31 days.

—
Total 60 days, and make July 31, the last day on which an Adverse could be filed.

Time Cannot be Extended.—No adverse claim can be received after the expiration of the statutory period; even a stipulation between parties, enlarging the time for filing, is of no effect and will be disregarded by the Land

Office. 6 L. O. 105; 9 L. O. 5; *Sickel* 208, 314. This ruling of the Department as to its own action is undoubtedly correct; only in a Court of Chancery, if anywhere, could relief in such a case be afforded.

So also the 30 days' time allowed for commencing suit cannot be extended; the law limiting the period is mandatory; if the papers intended to commence suit are delayed in the mail, or action is delayed through the agency of an attorney corrupted, the Land Office can afford no relief.—*Sickel* 190, 320.

Period of Publication.—See page 265.

Republication.—When for any cause a republication is required, the Adverse Claim must be re-filed during the second period of advertising; but no additional filing fee is charged.—*Sickel*, 313.

Sunday.—It has been ruled that an Adverse may be filed on Sunday, when the last day falls on Sunday: and out of office hours on any day; but that the receiving and filing out of office hours, or on Sunday, is not compulsory upon the officers.—6 L. O. 73. *Sickel*, 391. And the fact that the last day falls on Sunday does not extend the time to the day following. *In re Ground Ho., Lode Adverse*, April 17, 1883.

Amendment.—An adverse claim cannot be withdrawn for amendment; but if a material defect should be discovered, there would be nothing to prevent the filing of a second adverse, complete in itself, provided the 60 days had not expired. *Copp*, 121, 155, 227. *Sickel* 208.

What Claims Should Adverse.—A tunnel should adverse to protect its line (*p.* 138.) A mill site must adverse a lode claim to protect its rights. 9 L. O. 71. So also must a town lot or other surface right. A co-tenant who is claimed to have been forfeited out, must ad-

verse to protect such interest as he may assert. 9 L. O. 113. Of course lode must adverse lode, and mill site must adverse mill site, or all pretense of prior title will cease to be of avail. See p. 76.

Such easements (flumes, ditch rights, &c.) as are protected by statute need not adverse. *Rockwell v. Graham*, 9 Colo. 36. See p. 112.

Plat and Abstract.—When it is impossible to procure an actual survey, an adverse claim showing the nature, extent and boundaries of the conflict stating the reason why the claim could not be reached for survey, will be sufficient. 8 L. O. 188.

An adverse against a placer entered by governmental sub-divisions need not be accompanied by a plat made on a special survey. Failure of adverse claimant to furnish certified copy of location certificate, held not fatal. 14 L. O. 237.

Miscellaneous Rulings.—An adverse claim substantially defective may be rejected. *Beckner v. Contes*, 3 L. O. 18; 9 L. O. 5; but if it show the nature, boundaries and extent of the claim the land office will leave all further questions to the court; 4 L. O. 66; 7 L. O. 51; 9 L. O. 109.

The land office is not bound to receive an adverse claim when the filing fee is not paid or tendered; 3 L. O. 36.

Where there is no surface conflict an adverse cannot be maintained; 7 L. O. 50. An adverse with no surface conflict, filed to anticipate conflict expected *on the dip*, will not be received. *New York Hill Co. v. Rocky Bar Co.* 15 L. O. 3. *Champion Co. v. Wyoming Co.*, 16, Pac. 513.

An adverse based on a claim located after the publication began not containing allegations denying the valid-

ity of the prior claim adversed, will be rejected ; 7 L. O. 50. *Contra*, 9 L. O. 190.

Ejectment, in Support of Adverse.—After the Adverse Claim is filed, the Adverse Claimant must bring suit in Ejectment for the premises in dispute, within 30 days, under the terms of R. S. § 2326, which says :

“ It shall be the duty of the Adverse claimant, within thirty days after filing his claim, to commence proceedings in a Court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment ; and a failure so to do shall be a waiver of his Adverse claim.”

The Proper Court is usually the District Court of the County where the mine is situate, except in those cases where the facts of value and citizenship are such that the U. S. Circuit Court may have jurisdiction. It has been held that the Federal Courts have jurisdiction in all suits supporting Adverse Claims, (where the value reaches the jurisdictional limit, then \$500, now \$2000,) on account of such cases arising under laws of the United States. *Frank Co. v. Larimer Co.*, 1 M. R. 150. But that decision has not been followed in more recent cases in the same Court.

Even when the Courts of the United States have undoubted jurisdiction the State Court is not ousted, but the suit may be commenced in the State Court, subject to Defendant's right of removal.

Filing Complaint, but delaying issue of Summons, is not a compliance with the law. *Copp, M. L.*, 296.

Title in Neither Party.—That if, in any action brought pursuant to section twenty-three hundred and twenty-six of the Revised Statutes, title to the ground in controversy shall not be established by either party, the jury shall so find, and judgment shall be entered according to the verdict. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the land office or be entitled to a patent for the ground in controversy until he shall have perfected his title. A. C. March 3, 1881.

The rulings under the above act are, that each party is practically a plaintiff and must show his title; that there can be no non suit, but that if neither show title the verdict must be special—which is an assertion that the title remains in the United States, so far, at least, as the litigating parties are concerned. *Jackson v. Roby* 109 U. S. 440. *Rosenthal v. Ives*, 12 Pac. 901.

Statutory new trials are, in practice, granted to either party after such verdict.

The effect of the act is to prevent a recovery upon possession alone in ejectment supporting adverse. *Becker v. Pugh*, 9 Colo. 539, This of course would not apply where a party claims by continuous five years possession under R. S. § 2332.

The suit in support of an adverse is one at law and not in equity. *Burke v. McDonald*, 13 Pac. 351. And ejectment is the proper form. *Becker v. Pugh*, 9 Colo. 539.

Complaint.—As the complaint is filed in support of the adverse it should conform strictly to it. It should not declare generally for either lode but for the interference. If it declare for the entire lode it would necessitate a disclaimer as to parcel of the premises. There is also a special paragraph with regard to the costs.—G. S. § 423.

(III.) FORM OF COMPLAINT.

STATE OF COLORADO, } ss.
County of *Lake*, }

In the District Court of said County.

J. Brisbin Walker,) Plaintiff.

Jesse White,) Defendant.

The plaintiff complains and alleges :

I. That on to-wit: the *first* day of *January*, A. D. 1884, and ever since hitherto he was, and is, the owner and in actual occupation of the *Elephant* Lode Mining Claim, 1500 feet in length by 300 feet in width, situate in *Alpine* Mining District, County and State aforesaid.

2. That the plaintiff is, and at all times mentioned in this complaint hath been, a citizen of the United States. (or)

2. That at and before the date last aforesaid the plaintiff had declared his intention to become a citizen of the United States before a court of record, to-wit: The Court of Common Pleas of the County of Allegheny, Commonwealth of Pennsylvania.

3. That he claims the legal right to occupy and possess said premises and is entitled to the possession thereof by virtue of full compliance with the local laws and rules of miners in said mining district, the laws of the United States, and of said State of Colorado, by pre-emption (and purchase) and by actual prior possession, as a Lode Mining Claim, located on the public domain of the United States.— See Code, § 267.

4. That on or about the first day of November, A. D. 1885, the Defendant wrongfully entered upon parcel of said claim, to-wit: All that part of said claim which is intersected by the exterior lines of Survey Lot No. 5555, known as the Bear Lode Mining Claim, as shown by plat marked Exhibit "B," filed on the first day of May, A. D. 1888, in the Land Office of the United States, at Leadville, in the said State, with the adverse claim of said Plaintiff against the entry of said survey lot for Patent, such ground so intersected being described as follows: (*here interference should be described by metes and bounds*) and that defendant hath ever since hitherto wrongfully withheld the possession of said parcel of said Elephant Lode from the Plaintiff to his damage in the sum of one hundred dollars.

5. That this suit is brought in support of said adverse claim, and that Plaintiff necessarily disbursed, expended and paid out the sum of Twenty-five Dollars, for plats, abstracts, and copies of papers filed in said Land Office with his said Adverse Claim, and also a reasonable counsel fee, to-wit: Fifty Dollars, for the expense of preparing his said Adverse Claim.

Wherefore Plaintiff prays judgment against the Defendant:

1. For the recovery of possession of said parcel of said Elephant Lode Mining Claim.
2. For the sum of One Hundred Dollars Damages.
3. For the sum of Seventy-five Dollars expended in support of said Adverse Claim.
4. For costs of suit.

WM. M. MAGUIRE, Attorney for Plaintiff.

Add verification if desired; but in actions of ejectment, trespass, etc., the practice of verifying the pleadings ought to be discouraged.

Paragraph 2 of above complaint is inserted under the suggestion of recent cases in California. *Lee Doon v. Tesh*,

6 *Pac.* 97; 68 *Cal.* 43; 8 *Pac.* 261; but we do not believe it to be necessary. The fact of citizenship of both parties has already been proved in the Land Office proceedings by statutory evidence—R. S., § 2321; and in judicial proceedings it is presumed until denied.

Paragraph 5 of above form is based on G. S. Sec. 423; the costs in such section, *strictly construed*, could not be made to include more than the expense of abstract, plat and attorney's fee.

It is customary between counsel to concede without proofs that \$75 has been paid under this allegation. If the statutory new trial is taken this amount does not seem to go as part of the costs, but goes to the final trial.

There is another style of complaint which sets forth chronologically the fact of discovery, of sinking the shaft its depth, and what it disclosed; the placing of the location stake, the marking of the claim, and the record; following the language of the statute concerning location, &c.; but many claims are sufficiently valid to maintain ejectment without a strict location, or the defendant may be in position where he is estopped from asserting weak points in the plaintiff's case, and such recitals are not the statement of facts required by the Code. In any event such recitals lead to cumbersome pleadings and to an immaterial issue and are not the ultimate facts required to be stated in Code pleading.

General allegations of title are sufficient. *Rough v. Simons*, 3 *Pac.* 804; 65 *Cal.* 227.

Rulings in Ejectment Supporting Adverse.—An adverse claim may show that the location adversed is invalid by reason of the existence of a third claim in which neither party has any interest. *Harrington v. Chambers*, 1,

Pac. 362. Affirmed, 111 U. S. 350, but with only a general reference to this point in the last paragraph. To the contrary seems *Strepy v. Stark*, 7 *Colo.* 614.

Declarations of a locator may be given in evidence to dispute his title. *Harrington v. Chambers*, *supra*. But not admissions made after he has parted with his title. *McGinnis v. Egbert*, 8 *Colo.* 41 ; 15 *M. R.* —.

Proof of Commencing Suit.—After the complaint is filed a certificate should be made and signed by the Clerk of the Court and filed within fifteen days in the local Land Office, in substance as follows :

(JJ.) CERTIFICATE OF SUIT.

STATE OF COLORADO, {
County of *Lake*. { ss.

I, *J. H. Playter*, Clerk of the District Court of said County, do hereby certify that *J. Brisbin Walker* did on the 11th day of *May*, A.D. 1888, commence an action in said Court against *Jesse White*, to sustain an adverse claim against the *Bear Lode*, Survey Lot No. 5555, situate in *Alpine* Mining District, *Lake* County, State of Colorado, and to recover possession of all that parcel of the *Elephant Lode*, embraced within the lines of said Survey Lot, situate in said Mining District, and that said action is now pending and undetermined in said Court.

Attest my hand and the seal of said Court at *Leadville*, this 11th day of *May*, A. D. 1888.

[SEAL OF COURT.]

J. H. Playter, Clerk.

But the failure to file this certificate is not fatal under Rule 7 of L. O. Circular of July 6, 1883, to-wit:

7. Where an adverse claim has been filed, but no suit commenced against the applicant for patent within the statutory period, a certificate to that effect by the Clerk of the State Court having jurisdiction in the case, and also by the Clerk of the Circuit Court of the United States for the district in which the claim is situated, will be required.

Diligent Prosecution.—The Land Office cannot adjudicate upon the question whether the suit is being prosecuted with due diligence. *Richmond Co. v. Rose*, 114 U. S., 576.

Dismissal and Reinstatement.—Jurisdiction once attached remains and where default was had, but the cause reinstated, the adverse holds, notwithstanding Certificate of no suit pending had been filed during the interval. 9 L. O. 164. Nor will a Receiver's Receipt obtained in such interval be allowed in evidence. *McEvoy v. Hyman*, 25 Fed. 539.

Waiver of Adverse. Final Dismissal.—An adverse claim may be waived. 12 L. O. 167. Dismissal of the supporting suit is a waiver. *Id.* 264.

5. Where such suit has been dismissed, a certificate of the clerk of the court to that effect, or a certified copy of the order of dismissal, will be sufficient. *Rule 5, L. O. Circular, July 6, 1883.*

6. In no case will a relinquishment of the ground in controversy, or other proof, filed with the Register or Receiver, be accepted in lieu of the evidence required in paragraphs 4 and 5. —*Rule 6, Ibid.*

PROCEEDINGS AFTER DETERMINATION OF SUIT.

Land Office Requirement in Such Case.—1. Where an adverse claim has been filed and suit thereon commenced within the statutory period, and final judgment determining the right of possession rendered in favor of the applicant, it will not be sufficient for him to file with the Register a certificate of the clerk of the court, setting forth the facts as to such judgment, but he must, before he is allowed to make entry, file a certified copy of the judgment, together with the other evidence required by section 2326, Revised Statutes." *Rule 4 Circ. July 6, 1883.*

The ejectment being determined in favor of *Defendant* he files a copy of the judgment roll and enters the lot; if in favor of *Plaintiff*, he completes proof in the same manner as the original applicant, and upon filing a copy of the judgment roll is allowed to enter and pay for the lode or so much as his adverse claim may cover; if it claim only a part of the original survey, a patent will issue to the original applicant for the portion not in controversy. When there is a recovery by *Plaintiff* he must obtain a new order

of survey, paying the same deposit as the applicant, and must file a new plat in the Land Office, but of course does not have to make publication or post notice: with these exceptions, he proceeds after winning his suit, using a full set of "final entry papers," with affidavit of citizenship, the same as if he had been an original applicant for patent.

When a case is compromised after suit brought, it is therefore always more convenient to stipulate to have the plaintiff dismiss, taking bond or deed to secure the land yielded, instead of taking verdict for either Plaintiff or Defendant.

In such case upon filing Certificate of Dismissal the original survey goes to Patent without further complication, and the Defendant can convey after entry according to the terms of settlement.

Annual Labor.—The pendency of an Adverse Claim or of a suit supporting the same, does not excuse the non-performance of annual labor on either Lode. *Copp*, 273. *Sickel* 371. But it is not required after entry. 11 *L. O.* 67. *See p.* 56.

Where neither Lode keeps up its annual labor after adverse, the application may be cancelled on the suggestion of an intervening relocater. *Higgins v. John Gold Co.* 14 *L. O.* 238.

PROTEST.

The office of a protest is to show that no patent such as applied for should issue—as where a mill site patent is asked for on mineral ground.

Or that it should not issue to the particular applicant by reason of some defect of person, as that the applicant is a foreign corporation; or for failure to comply with the practice of the department in some serious particular. It is not safe to rely on the presumption that the Land Office will of its own motion observe every departure from its own rules.

For irregularities, such as short publication, the applicant would have to go back to that step, and during the republication the protestant could adverse.

The fact that the protestant is or claims to be the real owner, or to have the better title, is the office of an adverse and not a ground of protest: but it should be averred to give standing to the protestant.

The protestant can never by this means get title. He can at most, defeat the efforts of the applicant. He is not considered a party to the proceeding (4 L. O., 114,) and has no right of appeal: 4 L. O., 3; 8 L. O., 53.

To what extent defects in the original location, *e. g.* that discovery shaft is on patented ground; has never disclosed mineral, entry by &c. See 14 L. O., 162; 11 L. O., 67; and in particular, the final paragraph of U. S. R. S. § 2325.

FORM OF PROTEST.

In the matter of the application of *The Roaring Fork Mining Company* for patent on the *Alice H.* Mill Site Survey Lot No. 930 B, Central City Land Office, Colorado.

Your Protestant, *Joseph Reynolds*, whose post office address is *Chicago, Illinois*, a citizen of the United States over the age of twenty-one years, hereby respectfully protests against the entry by and issuance of patent to *The Roaring Fork Mining Company* on their so called mill site called the *Alice H.* Mill Site, Survey Lot No. 930 B. Because:

1. The said so called mill site is not and never was used or occupied in connection with said *Alice H. Lode* for mining or milling purposes.

2. It is not and never was used or occupied by the applicant or its grantors in connection with any lode or by itself for mining or milling purposes.

3. There are no improvements and never have been any improvements upon said mill site except the improvements made by your protestant.

4. The said mill site is below the mill and below the tail race of the mill of the said applicant company and has never been and is not now parcel of nor appurtenant to said mill nor included within the mill site on which said mill stands.

5. Said so called mill site or a great part thereof has been in good faith located as the *Lion Mill Site* by your protestant and is now being used for mining purposes in connection with the *Lion Lode*, lying immediately above said mill site owned and being worked by your protestant.

6, &c.; 7, &c : Add or substitute other reasons according to the facts, *e. g.* The publication was not posted on the Land Office Bulletin during the period of newspaper publication—the location of said mill site is on mineral land and land more valuable for mineral than for mill site purposes—&c., &c.

Wherefore for these causes as verified by the affidavit of your protestant attached hereto, and as well for the want of proper proof that the said so-called *Alice H. Mill Site* is being "used or occupied by the proprietor of the said *Alice H. Lode* for mining or milling purposes," as required by the terms of section 2337 of the Revised Statutes of the United States, and that the applicant has otherwise failed to comply with the terms of Chapter 6 of Title XXXII of said Revised Statutes, entitled, "Mineral Lands and Mining Resources," your petitioner protests as aforesaid.

Jo Reynolds.

STATE OF COLORADO, } ss.
County of *Gilpin*.

Before me the subscriber, *Ed. W. Hurlbut*, a Notary Public in and for said County, personally appeared *Joseph Reynolds*, who, being duly sworn, saith that he is the protestant named in the foregoing protest subscribed by him; that he has read the same and knows the contents thereof, and that the same and the matters and things therein stated are true.

Jo Reynolds.

Sworn and subscribed before me this 10th day of May, A. D. 1888.

[SEAL.]

Ed. W. Hurlbut, N. P.

TEXT OF U. S. STATUTES REPEALED.

Sections of Act of July 26, 1866, Repealed by Act of May 10, 1872,
and not found in the Revised Statutes.

Original License to Explore.—§ 1. That the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States.

Improvements. Dip. Patent.—§ 2.—That whenever any person or association of persons, claim a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, or copper, having previously occupied and improved the same according to the local custom or rules of miners in the district where the same is situated, and having expended in actual labor and improvements thereon an amount of not less than one thousand dollars, and in regard to whose possession there is no controversy or opposing claim, it shall and may be lawful for said claimant or association of claimants to file in the local Land Office a diagram of the same, so extended laterally or otherwise as to conform to the local laws, customs, and rules of miners, and to enter such tract and receive a patent therefor, granting such mine, together with the right to follow such vein or lode with its dips, angles, and variations, to any depth, although it may enter the land adjoining, which land adjoining shall be sold subject to this condition.

Application for Patent.—§ 3.—That upon the filing of the diagram as provided in the second section of this Act, and posting the same in a conspicuous place on the claim, together with a notice of intention to apply for a patent, the Register of the Land Office shall publish a notice of the same in a newspaper published nearest to the location of said claim, and shall also post such notice in his office for the period of ninety days; and after the expiration of said period, if no adverse claim shall have been filed, it shall be the duty of the Surveyor-General, upon application of the party, to survey the premises and make a plat thereof, in-

dorsed with his approval, designating the number and description of the location, the value of the labor and improvements, and the character of the vein exposed; and upon the payment to the proper officer of five dollars per acre, together with the cost of such survey, plat, and notice, and giving satisfactory evidence that said diagram and notice have been posted on the claim during said period of ninety days, the Register of the Land Office shall transmit to the General Land Office said plat, survey, and description: and a patent shall issue for the same thereupon. But said plat, survey, or description shall in no case cover more than one vein or lode, and no patent shall issue for more than one vein or lode, which shall be expressed in the patent issued.

Form of Survey. Length of Claim.—§ 4.—That when such location and entry of a mine shall be upon unsurveyed lands, it shall and may be lawful, after the extension thereto of the public surveys, to adjust the surveys to the limits of the premises according to the location and possession and plat aforesaid, and the Surveyor-General may, in extending the surveys, vary the same from a rectangular form to suit the circumstances of the country and the local rules, laws, and customs of miners; *Provided, That* no location hereafter made shall exceed two hundred feet in length along the vein for each locator, with an additional claim for discovery to the discoverer of the lode, with the right to follow such vein to any depth, with all its dips, variations, and angles, together with a reasonable quantity of surface for the convenient working of the same as fixed by local rules: *And provided further, That* no person may make more than one location on the same lode, and not more than three thousand feet shall be taken in any one claim by any association of persons. *See pages 18, 22.*

Adverse Claims.—§ 6.—That whenever any adverse claimants to any mine located and claimed as aforesaid shall appear before the approval of the survey, as provided in the third section of this Act, all proceedings shall be stayed until a final settlement and adjudication in the courts of competent jurisdiction of the rights of possession to such claim, when a patent may issue as in other cases.

FULL TEXT OF UNITED STATES LAWS NOW IN FORCE.

The text is taken from the last edition of the "Revised Statutes of the United States," 1878, and the subsequent Session Laws to and including the Session of 1886-87. This revision includes the unrepealed sections of

An Act granting the right of way to ditch and canal owners over the public lands, and for other purposes.—*Approved July 26, 1866.*

An Act to amend an Act granting the right of way to ditch and canal owners over the public lands, and for other purposes.—*Approved July 9, 1870.*

An Act to promote the development of the mining resources of the United States.—*Approved May 10, 1872.*

Commonly called the "Mining Acts," with all their amendments and miscellaneous sections from other Acts.

The repealed sections, (being sections 1, 2, 3, 4 and 6, of the Act of 1866,) repealed by the Act of 1872, are found on preceding pages 307, 308.

TITLE XIII, CHAPTER 17.

Possessory Actions.—§ 910.—No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land in which such mines lie is in the United States ; but each case shall be adjudged by the law of possession.—*Sec. 9, Feb. 27, 1865. See pp. 9-13*

NOTE.—All the Statutes, State or Federal, printed in this book, have been compared with the original, so as to have its exact wording and punctuation.

TITLE XXXII, CHAPTER 6.

ENTITLED "MINERAL LANDS AND MINING RESOURCES."

Reserved from Sale under the Pre-Emption Acts.—§ 2318.—In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.—*Sec. 5, July 4, 1866.*

General License.—§ 2319.—All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regular District Rules. | tions prescribed by law, and according to the local customs or rules of miners in the several mining-districts, so far as the same are applicable and not inconsistent with the laws of the United States.—*Sec. 1, May 10, 1872. See p. 9.*

Length of Claims.—§ 2320.—Mining-claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining-claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining-claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary. The end-lines of each claim shall be parallel to each other.—*Sec. 2, May 10, 1872. See pp. 22, 23, 26.*

Proof of Citizenship.—§ 2321.—Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.—*Sec. 7, May 10, 1872. See p. 261.*

Surface, Dip and Side Veins.—§ 2322.—The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain,

their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with State, Territorial, and local regulations not in conflict with the laws of the United States governing their possessory title shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, **Top or Apex**, and ledges throughout their entire depth, the top

Controls. | For apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end-lines of their locations, so continued in their own direction that such planes will intersect such exte-

Surface. | rior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.—*Sec. 3, May 10, 1872. See pp. 85, 94, 95, 102.*

Tunnels.—§ 2323.—Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.—*Sec. 4, May 10, 1872. See p. 134.*

District Rules.—§ 2324.—The miners of each mining-district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining-claim,

Location. | subject to the following requirements: The location

Record. | must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent

Annual | monument as will identify the claim. On each claim

Labor. | located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located

prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the *tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to re-location in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such **Forfeiture.** location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures.—*Sec. 5, May 10, 1872. See pages 45, 52, 64.*

Amendment of 1875—Labor by Tunnel.—[That section two thousand three hundred and twenty-four of the Revised Statutes be, and the same is hereby, amended so that where a person or company has or may run a tunnel for the purposes of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said Act; and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said Act.]—*Sec. 1, Feb'y 11, 1875.*

Amendment of 1880.—Annual Labor Period Fixed.—That section twenty-three hundred and twenty-four of the Revised Statutes of the United States be amended by adding the following words: "*Provided*, That the period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim, and this section shall apply to all claims located since the tenth day of May Anno Domini eighteen hundred and seventy-two."—*Sec. 2, Jan'y 2, 1880. See p. 53.*

Application for Patent.—§ 2325. — A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation au-

*NOTE.—Instead of June 10, 1874, the date ultimately fixed was January 1, 1875. *See note, p. 52.*

thorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper Land-Office an application for a patent, under oath, showing such compliance, together with a plat and field-notes of the claim or claims in common, made by or under the direction of the United States Surveyor-General, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such Land Office, and shall

60 Days | thereupon be entitled to a patent for the land, in
Publication. | the manner following: The Register of the Land Office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with **\$500 Improve-** | the Register a certificate of the United States
ments. | Surveyor-General that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of **Adverse** | publication. If no adverse claim shall have been filed
Claim | with the Register and the Receiver of the proper Land Office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that **\$5 per** | no adverse claim exists; and thereafter no objection
Acres. | from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.—*Sec 6, May 10, 1872 See App. for Patent, 214*

Amendment of 1880. Applications by Non-Residents.—That section twenty-three hundred and twenty-five of the Revised Statutes of the United States be amended by adding thereto the following words: "*Provided*, That where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agent is conversant with

the facts sought to be established by said affidavits: *And provided*. That this section shall apply to all applications now pending for patents to mineral lands."—*Sec. 1, January 22, 1880. See page 295.*

Adverse Claims.—§ 2326.—Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or **Suit Supporting** | the adverse claim waived. It shall be the duty **in 30 Days.** | of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to **Proceedings after** | final judgment; and a failure so to do shall **Judgment.** | be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment roll with the Register of the Land Office, together with the certificate of the Surveyor-General that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the Receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment roll shall be certified by the Register to the Commissioner of the General Land Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the Surveyor-General, whereupon the Register shall certify the proceedings and judgment roll to the Commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining claim to any person whatever.—*Sec. 7, May 10, 1872. See page 292.*

Amendment of 1882. Adverse by Agency: by Non-Residents.—That the adverse claim required by section twenty-three hundred and twenty-six of the Revised Statutes may be verified by the oath of any duly authorized agent or attorney-in-fact of the adverse claimant cognizant of the facts stated; and the adverse claimant, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record of the United States or the State or Territory where the adverse claimant may then be, or before any notary public of such State or Territory.—*Sec. 1, April 26, 1882. 22 Stat. L. 49.*

Idem. Affidavits Out of Land District.—That applicants for mineral patents, if residing beyond the limits of the district wherein the claim is situated, may make any oath or affidavit required for proof of citizenship before the clerk of any court of record or before any notary public of any State or Territory.—*Sec. 2, Id.*

Survey.—§ 2327.—The description of vein or lode claims, upon surveyed lands, shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued for claims upon unsurveyed lands, the Surveyor-General, in extending the surveys, shall adjust the same to the boundaries of such patented claim, according to the plat or description thereof, but so as in no case to interfere with or change the location of any such patented claim.—*Sec. 8, May 10, 1872. See page 2-3.*

Previous Applications.—§ 2328.—Applications for patents for mining claims under former laws now pending may be prosecuted to a final decision in the General Land Office; but in such cases where adverse rights are not affected thereby patents may issue in pursuance of the provisions of this chapter; and all patents for mining claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this chapter **Adverse Rights** | where no adverse rights existed on the tenth **Excepted.** | day of May, eighteen hundred and seventy-two. *Sec. 9, May 10, 1872. See pages 83-86.*

Placers Open to Entry.—§ 2329.—Claims usually called “placers,” including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.—*Sec. 12, July 9, 1870. See page 116.*

Legal Subdivisions of Placers.—§ 2330.—Legal subdivisions of forty acres may be sub-divided into ten acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after the ninth day of July, eighteen hundred and **160 Acre** | seventy, shall exceed one hundred and sixty acres

Placers. | for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any *bona fide* pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any *bona fide* settler to any purchaser.—*Sec. 12, July 9, 1870. See page 116.*

Placers on Surveyed Lands.—§ 2331.—Where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer mining

claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral land in any legal subdivision a quantity of agricultural land less than fifty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or pre-emption purposes.—*Sec. 10, May 10, 1872. See page 116.*

Limitations.—§ 2332.—Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse **Liens.** | claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.—*Sec. 13, July 9, 1870. See pages 141, 199.*

Placer Claim Containing Lode.—§ 2333.—Where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim, **Placers \$2.50** | and twenty-five feet of surface on each side there-
per acre. | of. The remainder of the placer claim, or any placer claim not embracing any vein or lode claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.—*Sec. 11, May 10, 1872. See pp. 122, 280.*

Deputy-Surveyor and Fees.—§ 2334.—The Surveyor-General of the United States may appoint in each land district containing mineral lands as many competent surveyors as shall apply for

appointment to survey mining claims. The expenses of the survey of vein or lode claims, and the survey and sub-division of placer claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy-surveyor to make the survey. The Commissioner of the General Land Office shall also **Charges for Publication.** have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the Register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the Register and the Receiver of the Land Office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land Office.—*Sec. 12, May 10, 1872. See page 224.*

Affidavits and Proofs.—§ 2335.—All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the Register and Receiver of the Land Office. In **Agricultural Contest.** cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or if such party cannot be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the Register of the Land Office as published nearest to the location of such land; and the Register shall require proof that such notice has been given.—*Sec. 13, May 10, 1872. See pp. 226-228.*

Cross Veins.—§ 2336.—Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of **Veins Uniting** the convenient working of the mine. And where **on the dip.** two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.—*Sec. 14, May 10, 1872. See pages 86-91.*

Mill-Sites.—§ 2337.—Where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non adjacent surface ground may be embraced and included in an application

for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill-site, as provided in this section.—*Sec. 15, May 10, 1872. See page 128.*

Easements.—§ 2338.—As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.—*Sec. 5, July 26, 1866. See page —.*

Water Rights. Appropriation.—§ 2339.—Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage. *Sec. 9, July 26, 1866. See page 109.*

Patents subject to Water Easements.—§ 2340.—All patents granted, or pre-emption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section.—*Sec. 17, July 9, 1870. See page 109.*

Homesteads.—§ 2341.—Wherever, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of pre-emption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres; or they may avail themselves of the provisions of chapter five of this title, relating to "HOMESTEADS."—*Sec. 10, July 26, 1866.*

Segregation of Agricultural Lands.—§ 2342.—Upon the survey of the lands described in the preceding section, the Secretary of the Interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to pre-emption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.—*Sec. 11, July 26, 1866. See page —*

Land Districts.—§ 2343.—The President is authorized to establish additional land districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.—*Sec. 7, July 26, 1866. See page 203.*

Vested Rights.—§ 2344.—Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws; nor to affect the provisions of the Act entitled "An Act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock Lode, in the State of Nevada," approved July twenty-five, eighteen hundred and sixty-six.—*Sec. 17, July 9, 1870.—Sec. 16, May 10, 1872.*

§ 2345.—Excepts Michigan, Wisconsin and Minnesota.*

State and Railroad Grants.—§ 2346.—No act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the Act or Acts making the grant.—*Res. No. 10, Jan. 30, 1865.*

*March 3, 1883, 22 Stat. L. 487 Alabama excepted.

As to lands on Military Reservations *See Act of July 5, 1884, 23 Stat. L. 101.*

COAL LANDS.

Legal Subdivisions.—§ 2347.—Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the Register of the proper land office, have the right to enter, by legal sub-divisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by compe-

teut authority, not exceeding one hundred and sixty acres to 160 or 320 such individual person, or three hundred and acres \$10 to twenty acres to such association, upon payment to \$20 pr. acre the Receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.—*Sec. 1, March 3, 1873.*

Settlers Preferred.—§ 2248.—Any person or association of persons severally qualified, as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference-right of entry, under the preceding section, of the mines so opened and improved: *Provided*, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.—*Sec. 2, Ibid.*

Land Office Proceedings.—§ 2349.—All claims under the preceding section must be presented to the Register of the proper land district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.—*Sec. 3, Ibid.*

Entry Limited.—§ 2350.—The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section twenty-three hundred and forty-eight shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.—*Sec. 4, Ibid.*

Conflicting Claims.—§ 2351.—In case of conflicting claims upon coal lands where the improvements shall be commenced, after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continuing good faith, shall determine the preference-right to purchase. And also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties. The Commissioner of the General Land Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections.—*Sec 5, Ibid.*

Vested Rights. Lodes and Placers Excepted.—§ 2352.—Nothing in the five preceding sections shall be construed to destroy or impair any rights which may have attached prior to the third day of March, eighteen hundred and seventy-three, or to authorize the sale of lands valuable for mines of gold, silver, or copper. *Sec. 6, Ibid.*

The proceedings to enter coal lands under the above sections are regulated by Circular of the General Land Office of July 31, 1882.

TIMBER ACT.

Chapter 150.—An Act authorizing the citizens of Colorado, Nevada and the Territories to fell and remove timber on the public domain for mining and domestic purposes.

Timber Free to Miners.—*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all citizens of the United States and other persons, *bona fide* residents of the State of Colorado, or Nevada, or either of the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said States, Territories, or districts of which such citizens or persons may be at the time *bona fide* residents, subject to such rules and regulations as the Secretary of

the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: *Provided*, the provisions of this act shall not extend to railroad corporations.

Land Office Inspection.—§ 2.—That it shall be the duty of the Register and Receiver of any local Land Office in whose district any mineral land may be situated to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purposes authorized by this act, within their respective land districts; and, if so, they shall immediately notify the Commissioner of the General Land Office of that fact; and all necessary expenses incurred in making such proper examinations shall be paid and allowed such Register and Receiver in making up their next quarterly accounts.

Penalty.—§ 3.—Any person or persons who shall violate the provisions of this act, or any rules and regulations in pursuance thereof made by the Secretary of the Interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months. —*U. S. Stat., Vol. 20, page 88. See U. S. v. Williams, 12 Pac. 852.*
Approved June 3, 1878.

TEXT OF PRESENT STATE STATUTES.

GENERAL STATUTES, CHAPTER LXXIV ENTITLED "MINES."

DIVISION 1. PLACER CLAIMS.

Location and Record of Placers.—§ 2385.—The discoverer of a placer claim shall, within thirty days from the date of discovery, record his claim in the office of the recorder of the county in which said claim is situated, by a location certificate, which shall contain: First, the name of the claim, designating it as a placer claim; second, the name of the locator; third, the date of location; fourth, the number of acres or feet claimed; and fifth, a description of the claim, by such reference to natural objects or permanent monuments as shall identify the claim. Before filing such location certificate the discoverer shall locate his claim: First, by posting upon such claim a plain sign or notice, containing the name of the claim, the name of the locator, the date of discovery, and the number of acres or feet claimed; second, by marking the surface boundaries with substantial posts, and sunk into the ground, to-wit: one at each angle of the claim.—*See p. 117.*

Annual Labor: Forfeiture.—§ 2386. On each placer claim of one hundred and sixty acres or more, heretofore or hereafter located, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made by the first day of August, 1879, and by the first day of August of each year thereafter. On all placer claims containing less than one hundred and sixty acres, the expenditure during each year shall be such proportion of one hundred dollars as the number of acres bears to one hundred and sixty. On all placer claims containing less than twenty acres, the expenditure during each year shall not be less than twelve dollars; but when two or more claims lie contiguous, and are owned by the same person, the expenditure hereby required for each claim may be made on any one claim: and upon a failure to comply with these conditions, the claim or claims upon which such failure occurred shall be open to re-location in the same manner as if no location of the same had ever been made: *Provided*, that the original locators, their heirs, assigns or legal representatives, have not resumed work upon the claim after failure and before such location: *Provided*, the aforesaid expenditures may be made in building or repairing ditches to conduct water upon such ground, or in making other mining improvements necessary for the working of such claim. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, to-wit: the first of August, 1879, for the locations heretofore made, and one year from the date of locations hereafter made, give such delinquent co-owner personal notice in writing, or, if he be a non-resident of the State, a notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and mailing him a copy of such newspaper, if his address be known, and if at the expiration of ninety days after such notice in writing, or after the first publication of such notice, such delinquent should fail or refuse to contribute his proportion of the expenditure required by this action, his interest in the claim shall become the property of his co-owners who have made the required expenditures.—*See pp. 123, 124.*

DIVISION II. LOSE CLAIMS.

Length, 1500 Feet.—§ 2397.—The length of any lode claim hereafter located may equal but not exceed fifteen hundred feet along the vein.—*Sec. 1, February 13, 1874. See page 23.*

Width 150 or 300 Feet.—§ 2398.—The width of lode claims hereafter located in Gilpin, Clear Creek, Boulder and Summit counties, shall be seventy-five feet on each side of the

center of the vein or crevice; and in all other counties the width of the same shall be one hundred and fifty feet on County each side of the center of the vein or crevice: *Provision.* *Provided*, that hereafter any county may, at any general election, determine upon a greater width not exceeding three hundred feet on each side of the center of the vein or lode, by a majority of the legal votes cast at said election, and any county by such vote at such election may determine upon a less width than above specified.—*Sec. 2, Id. See page 24.*

Requisites of Location Certificate.—§ 2399.—The discoverer of a lode shall, within three months from the date of discovery, record his claim in the office of the Recorder of the county in which such lode is situated, by a location certificate which shall contain:

First—The name of the lode.

Second—The name of the locator.

Third—The date of location.

Fourth—The number of feet in length claimed on each side of the center of discovery shaft.

Fifth—The general course of the lode as near as may be.—*Sec. 3, Id. See p. 45.*

Void Location Certificate.—§ 2400.—Any location certificate of a lode claim which shall not contain the name of the lode, the name of the locator, the date of location, the number of lineal feet claimed on each side of the discovery shaft, the general course of the lode, and such description as shall identify the claim with reasonable certainty, shall be void.—*Sec. 4, Feb. 13, 1874. See page 45.*

Discovery Shaft and Staking.—§ 2401.—Before filing such location certificate the discoverer shall locate his claim by:

First—Sinking a discovery shaft upon the lode to the depth of at least ten feet from the lowest part of the rim of such shaft at the surface, or deeper, if necessary to show a well-defined crevice.

Second—By posting at the point of discovery on the surface a plain sign or notice, containing the name of the lode, the name of the locator, and the date of discovery.

Third—By marking the surface boundaries of the claim.—*Sec. 5, Feb. 13, 1874. See page 26.*

Six Boundary Stakes.—§ 2402.—Such surface boundaries shall be marked by six substantial posts hewed or marked on the side or sides which are in toward the claim, and sunk in the ground, to-wit: one at each corner and one at the center of each side line. Where it is practically impossible on account of bed rock to sink

NOTE.—The Act approved February 13, 1874, did not take effect till June 15, 1874, which date was in the original Acts erroneously printed June 1st.

Precipitous Ground. | such posts, they may be placed in a pile of stones, and where in marking the surface boundaries of a claim any one or more of such posts shall fall by right upon precipitous ground, where the proper placing of it is impracticable or dangerous to life or limb, it shall be legal and valid to place any such post at the nearest practicable point, suitably marked to designate the proper place.—Sec. 6, Feb. 13, 1874. See 1, Feb. 2, 1876. See page 26.

Open Cuts and Tunnel Discoveries.—§ 2403.—Any open cut, cross-cut or tunnel which shall cut a lode at the depth of ten feet below the surface, shall hold such lode, the same as if a discovery shaft were sunk thereon, or an adit of at least ten feet in along the lode from the point where the lode may be in any manner discovered, shall be equivalent to a discovery shaft.—Sec. 7, Feb. 13, 1874. See page 35.

60 Days to Sink a Shaft.—§ 244.—The discoverer shall have sixty days from the time of uncovering or disclosing a lode to sink a discovery shaft thereon.—Sec. 8, Feb. 13, 1874. See page 27.

Side Lines. Top or Apex.—§ 2405.—The location or location certificate of any lode claim shall be construed to include all surface ground within the surface lines thereof, and all lodes and ledges throughout their entire depth, the top or apex of which lie inside of such lines extended downward, vertically, with such parts of all lodes or ledges as continue by dip beyond the sidelines of the claim, but shall not include any portion of such lodes or ledges beyond the end-lines of the claim or the end-lines continued, whether by dip or otherwise, or beyond the side-lines in any other manner than by the dip of the lode.—Sec. 9, Feb'y 13, 1874. See page 35.

End-Lines.—§ 2406.—If the top or apex of a lode in its longitudinal course extends beyond the exterior lines of the claim at any point on the surface, or as extended vertically downward, such lode may not be followed in its longitudinal course beyond the point where it is intersected by the exterior lines.—Sec. 10, Feb'y 13, 1874. See page 145.

Easements. Right of Way.—§ 2407.—All mining claims now located, or which may be hereafter located, shall be subject to the right of way of any ditch or flume for mining purposes, or of any tram-way or pack-trail, whether now in use or which may be hereafter laid out across any such location; *Provided always*, that such right of way shall not be exercised against any location duly made and recorded, and not abandoned prior to the establishment of the ditch, flume, tram way or pack-trail, without consent of the owner, except by condemnation, as in case of land **Parol** | taken for public highways. **Parol** consent to the location of any such easement accompanied by the completion of the same over the claim shall be sufficient without

writings ; *And provided further*, that such ditch or flume shall be so constructed that the water from such ditch or flume shall not injure vested rights by flooding or otherwise.—*Sec. 11, Feb. 13, 1874. See pp. 109; 114.*

Surface Rights.—§ 2408.—When the right to mine is in any case separate from the ownership or right of occupancy to the surface, the owner or rightful occupant of the surface may demand satisfactory security from the miner, and if it be refused may enjoin such miner from working until such security is given. The order for injunction shall fix the amount of bond.—*Sec. 12, Feb. 13, 1874. See page 130.*

Relocation of his own Claim by the Owner.—§ 2409.—If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries, or of taking in any part of an overlapping claim which has been abandoned, or in case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefits of this Act, such locator, or his assigns, may file an additional certificate, subject to the provisions of this Act; *Provided*, that such relocation does not interfere with the existing rights of others at the time of such relocation, and no such relocation or other record thereof shall preclude the claimant or claimants from proving any such title or titles as he or they may have held under previous location.—*Sec. 13, Feb. 13, 1874. See page 70.*

Record Proof of Annual Labor.—§ 2410.—Within six months after any set time or annual period, allowed for the performance of labor or making improvements, upon any lode claim *or placer claim*,* the person on whose behalf such outlay was made, or some person for him, *may** make and record in the office of the recorder of the county wherein such claim is situate an affidavit in substance as follows :

STATE OF COLORADO, } ss. -
 County, }

Before me, the subscriber, personally appeared _____ who, being duly sworn, saith, that at least _____ dollars' worth of work or improvements were performed or made upon (here describe claim or part of claim.) situate in _____ mining district, County of _____, State of Colorado, between the _____ day of _____, A. D. _____ and the _____ day of _____ A. D. _____* Such expenditure was made by or at the expense of _____ owners of said claim, for the purpose of complying with the law and holding said claim.

(Jurat.)

(Signature.)

And such affidavit, when so recorded, shall be *prima facie* evidence of the performance of such labor or the making of such improvements.*

Relocation of Abandoned Claims.—§ 2411.—The relocation of abandoned lode claims shall be by sinking a new discovery shaft and fixing new boundaries in the same manner as if it were the location of a new claim; or the relocater may sink the original discovery shaft ten feet deeper than it was at the time of abandonment, and erect new or adopt the old boundaries, re-erecting the posts if removed or destroyed. In either case a new location stake shall be erected. In any case, whether the whole or part of an abandoned claim is taken, the location certificate may state that the whole or any part of the new location is located as abandoned property.—*Sec. 16, Feb. 12, 1874. See page 68.*

One Record for Each Claim.—§ 2412.—No location certificate shall claim more than one location, whether the location be made by one or several locators. And if it purport to claim more than one location it shall be absolutely void, except as to the first location therein described, and if they are described together, or so that it cannot be told which location is first described, the certificate shall be void as to all.—*Sec. 17, Feb. 13, 1874.—See page 45.*

Miscellaneous Sections.—The above printed sections constitute the sections properly incorporated into the chapter of the General Statutes (Revision of 1883) entitled mines. Sections 2387-2396 printed in the chapter

* NOTE.—Sec. 15 of Act of Feb. 13, 1874, amended March 31, 1887, Acts of 1887, page 342. The Section before amendment read: Within six months after any set time or annual period allowed for the performance of labor, or making improvements upon any lode claim, the person on whose behalf such outlay was made, or some person for him, shall make and record an affidavit in substance as follows:

STATE OF COLORADO, } ss.
 _____ County. }

Before me, the subscriber, personally appeared _____, who, being duly sworn, saith that at least _____ dollars' worth of work or improvements were performed or made upon (here describe claim or part of claim) situate in _____ mining district, county of _____, State of Colorado. Such expenditure was made by or at the expense of _____, owners of said claim, for the purpose of holding said claim.

(Jurat)

Signature.

And such signature shall be *prima facie* evidence of the performance of such labor:

are almost entirely obsolete. Sections 2413-2424 refer to inspection, survey, drainage and other matters only incidental. All the sections printed in the chapter are hereinbefore either printed in full or referred to under their proper headings.

There has never been a codification of the mining statutes of either Territory or State, but the act of 1874 was an approach to it and contains, with its amendments, all the statutory regulations concerning discovery, location, record and annual labor. The only *local* Act is one of 1874 (Acts, p. 87,) referring to Eureka and Las Animas mining districts.

All the statutes bearing on the subject of mines in addition to those above printed in full I have endeavored to collate as follows:

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TERMS OF COURT.—U. S. CIRCUIT AND DISTRICT COURTS.

Hon. Samuel F. Miller, Circuit Justice.

Hon. David J. Brewer, Circuit Judge.

Hon. Moses Hallett, District Judge.

Henry W. Hobson, District Attorney.

Zeph T. Hill, Marshal.

William A. Willard, Clerk.

The United States Circuit and District Courts sit at Denver on the first Tuesday of May and on the first Tuesday of November.

At Pueblo on the first Tuesday of April.

At Del Norte on the first Tuesday of August.

SUPREME COURT.

Hon. William E. Beck, C. J.

Hon. Joseph C. Helm, J.

Hon. Samuel H. Elbert, J.

Hon. Alvin Marsh, Attorney General.

James A. Miller, Clerk.

Terms.—First Tuesday in April and first Tuesday in December, at Denver.

FIRST JUDICIAL DISTRICT.

Hon. *Chester C. Carpenter*, J., Golden.

CLEAR CREEK COUNTY.. *Georgetown*.....First Monday in June and December.
 GILPIN COUNTY.....*Central City*.....First Monday in January and July.
 JEFFERSON COUNTY.....*Golden*.....First Monday in April and November.

SECOND JUDICIAL DISTRICT,

Hon. *Victor A. Elliott*, J.

Hon. *Westbrook S. Decker*, J., Denver.

ARAPAHOE COUNTY.....*Denver*.....2d Tuesday in Jan.; 2d Tuesday in April; 2d Tuesday in Sept.

THIRD JUDICIAL DISTRICT.

Hon. *Caldwell Yeaman*, J., Trinidad.

BENT COUNTY.....*West Las Animas*.First Monday in March and September.
 CUSTER COUNTY.....*Rosita*.....First Tuesday in June.
 FREMONT COUNTY.....*Canon City*.....1st Monday in April; 3d Monday in October.
 LAS ANIMAS.....*Trinidad*.....2d Monday in March; 3d Monday in September.
 PUEBLO COUNTY.....*Pueblo*.....Fourth Monday in April and November.

FOURTH JUDICIAL DISTRICT.

Hon. *William Harrison*, J., Colorado Springs.

CHAFFEE COUNTY*Buena Vista*Second Monday in January, May and September.
 DOUGLASS COUNTY*Castle Rock*.....First Monday in December.
 ELBERT COUNTY.....*Middle Kiowa*.....Second Monday in December.
 EL PASO COUNTY.....*Colorado Springs*.Fourth Monday in March and first Monday in November.
 PARK COUNTY.....*Fair Play*.....Third Monday in April; first Monday in October.

FIFTH JUDICIAL DISTRICT.

Hon. Luther M. Goddard, J., Leadville.

LAKE COUNTY *Leadville*, 1st Monday in Mar.; 2d Monday in July; 1st Monday in Dec.
 SUMMIT COUNTY *Breckenridge* Third Monday in June; second Monday in October.
 EAGLE COUNTY *Red Cliff* First Monday in June, second Monday in November.

SIXTH JUDICIAL DISTRICT.

Hon. O. D. Hayt, J., Alamosa.

ARCHULETA COUNTY Attached to La Plata.
 CONEJOS COUNTY *Conejos* Second Tuesday in June.
 COSTILLA COUNTY *San Luis* Second Tuesday in March.
 DOLORES COUNTY *Rico* Last Tuesday in August.
 HUERFANO COUNTY *Badillo* Second Tuesday in December.
 LA PLATA COUNTY *Parrott City* Fourth Tuesday in April; first Tuesday in October.
 RIO GRANDE COUNTY *Del Norte* Second Tuesday in April; fourth Tuesday in November.
 SAGUACHE COUNTY *Saguache* Fourth Tuesday in March; second Tuesday in November.
 SAN JUAN COUNTY *Silverton* Third Tuesday in May; first Tuesday in September.

SEVENTH JUDICIAL DISTRICT.

Hon. M. B. Gerry, J., Gunnison.

DELTA COUNTY *Delta* Second Monday in February.
 GUNNISON COUNTY *Gunnison* First Monday in April; second Monday in August.
 HINSDALE COUNTY *Lake City* First Monday in July.
 MESA COUNTY *Grand Junction* Second Monday in January; third Monday in July.
 MONTROSE COUNTY *Montrose* Second Monday in March; fourth Monday in October.
 OURAY COUNTY *Ouray* First Monday in May; first Monday in October.
 SAN MIGUEL COUNTY *Telluride* First Monday in June; second Monday in September.

EIGHTH JUDICIAL DISTRICT.

Hon. *Thomas A. Robinson, J.*, Fort Collins.

BOULDER COUNTY.....*Boulder*First Monday in February ; first Monday in September.
 LARIMER COUNTY*Fort Collins*.....First Tuesday in March and October.
 LOGAN COUNTY.....*Sering*.....First Tuesday in December and June.
 WASHINGTON COUNTY.....*Akron*.....Third Tuesday in December and June.
 WELD COUNTY.....*Greeley*First Tuesday in April , second Tuesday in November.

NINTH JUDICIAL DISTRICT.

Hon. *Thomas A. Rucker, J.*, Aspen.

GARFIELD COUNTY.....*Glenwood Springs*.First Monday in October.
 GRAND COUNTY.....*Grand Lake*.....Second Monday in June.
 PITKIN COUNTY.....*Aspen*1st Monday in January and May ; 2d Monday in Nov.
 ROUTT COUNTY*Huhn's Peak*Second Monday in September.

COUNTY COURTS.

Arapahoe,
Chaffee,
El Paso,
Lake,
Park,
Rio Grande,
Saguache,
Summit,
Uncompahgre
Weld.

Each six terms beginning on first Mondays of January, March, May, July, September and November.

Costilla.

Four terms, commencing on second Mondays of March, June, September, and December.

Conejos.

Four terms, commencing on the third Mondays of March, June, September and December.

Las Animas,

Logan.

Four terms, commencing on the first Mondays of January, April, July and October.

All other counties have four terms, beginning on the first Mondays of March, June, September and December.

The jurisdiction of this Court is confined to \$2000. It cannot issue an injunction in any mining case.

The County Courts are supposed to commence their terms at set periods, holding four or more each year. But as suits are now commenced without regard to return days, the return days of this Court are of small importance. Being paid in fees and not by salary and deprived of an attending panel of jurors these Courts become rather an office than a court and are able to command respect only as the personal character of the judge may suffice to relieve the effect of these inherent defects in their constitution.

APPENDIX.—LAND DISTRICT CHANGES.

By circular of Jan. 7, 1888, the General Land Office publishes the following Land District changes, dating from January 4:

1. *The boundaries of the Lake City Land District shall be as follows:* Commencing at a point where the line between townships 8 and 9 south of the sixth principal meridian intersects the western boundary of the State; thence E. along said line to the N. E. cor. T. 9 S., R. 97 W., thence S. to the line between townships 11 and 12 south, thence E. along said line to the N. E. cor. of T. 12 S., R. 91 W.; thence S. along said line to the third connection line south; thence W. along said connection line to the line between ranges 6 and 7 west of the New Mexico principal meridian; thence south along said range line to the N. E. cor. of T. 41. N. R. 7 W., thence W. along the line between townships 41 and 42 north to the western boundary of the State; thence north with said boundary line to the place of beginning.

2. *Transfer from the Lake City to the Gunnison Land District* all of the townships in ranges 1, 2 and 3 west of the New Mexico principal meridian and north of the line between townships 42 and 43 north; all of the townships in ranges 4, 5 and 6 west of said meridian and north of the line between townships 41 and 42 north.

3. *Transfer from the Lake City to the Del Norte Land District* all the townships and parts of townships in ranges 1, 2 and 3 west of the New Mexico principal meridian south of the line between townships 42 and 43 north, and all of the townships and parts of townships in ranges 4, 5 and 6 west of said meridian, south of the line between townships 41 and 42.

4. *Remove the Land Office now located at Lake City to Montrose, and the Lake City Land District shall be hereafter known as the Montrose Land District.*

GLOSSARY OF MINING TERMS.

Acquia. A ditch. *Spanish.*

Adit. A horizontal drift or other passage used as an opening or drain to a mine; applied to no level except one opening on the surface. *Latin.*

Adventurer. A shareholder. *English.*

Alligator. A rock breaker operating by jaws.

Alluvium. The sediment of streams and floods. *Latin.*

Amalgam. The mechanical combination of quick-silver with gold or silver.

Apex. The top of a vein. *Latin.*

Arastra. A circular mill for grinding quartz by trituration between stones attached loosely to cross arms. *Sp.*

Arch. A part of the gangue left standing for support. *Cornish.*

Argentiferous. Silver-bearing. *Lat.*

Ascension Theory. That referring the filling of fissures to matter from below. *Von Cotta, 71.*

Assay. A test of the mineral contained in a larger mass by extracting and weighing the product of a sample. *See p. 201.*

Assessment Work. The annual labor required to hold a claim. *See p. 52.*

Attle. Waste Rock. *Cornish.*

Auriferous. Gold-bearing. *Lat.*

Back. The roof of a drift, stope or other working.

Bal. A mine. *Corn.*

Bank. The surface at the pit's mouth. *Eng.*

Banksman. The man at the shaft mouth who handles the bucket. *Corn.*

Bar Diggings. Gold washing on bars.

Barrier. Posts of unworked gangue or coal left to prevent drainage from mine to mine.

Base Bullion. Pig lead containing its gold and silver unseparated.

Base Metals. All metals except gold, silver, mercury and the platinum group, which are termed noble metals.

Bed. A horizontal seam or deposit of ore.

Bed Rock. The solid rock underlying the gravel, slide, or other loose earth.

Black Jack. A dark variety of zink blende.

Blende. A sulphide of zink.

Blossom. Decomposed outcrop of a vein. Gossan. Iron hat.

Blow-out. A spreading out-crop.

Bonanza. Fair weather at sea; a large body of paying ore. *Sp.*

Booming. A kind of placer mining where the water is accumulated in a dam and let out at intervals, so as to utilize its cutting power in the form of a torrent.

Boom Ditch. (1) The ditch from the dam used in booming. (2) A slight channel cut down a declivity into which is let a sudden head of water intended to cut to bed-rock and prospect for the apex of any underlying lode.

Borraska. The reverse of Bonanza. Out of pay.

Boulder. A large loose rounded mass of stone.

Breast. The heading of a drift, tunnel, or other horizontal working.

Breccia. A conglomerate of angular fragments.

Broaching. Trimming or straightening a working.

Buddling. Separating ores by washing.

Bullion. Uncoined gold or silver.

Cache. A place where a prospector's provisions or outfit is buried or hidden. *French.*

Cage. The frame to hold the bucket or car.

Canon. A narrow valley. Termed Box Canon when the sides are perpendicular. *Sp.*

Cap. Space where the walls contract so as to leave only a trace of the vein. A pinch. (2) A space in the vein where the gangue becomes barren.

Carbonates. The combination of carbonic acid with bases. Soft carbonates have lead for a base. Hard carbonates have iron for a base.

Cement. Gold bearing gravel united and hardened into a compact mass.

Chaffee Work. A local term for annual labor.

Cheek. The side or wall of a vein.

Chimney. A pocket or ore body when found pipe-shape, with general perpendicular position.

Chlorides. Compounds of chlorine with other elements.

Chute (or Shoot). A flume for sliding ore. (2) A chimney of ore. *French.*

Cinn bar. Sulphide of mercury.

Claim. A location. The amount of ground which may be located by a single person or association.

Clean-up. The operation of collecting the gold which has settled in the flume of a placer or in an arastra.

Cleavage. The property of splitting more or less readily in certain definite directions.

Coaster. One who picks dump, or gleans in abandoned mines for ore in sight.

Cbbing. Ore sorting.

Collar. (1) The top of a shaft or winze. (2) The timbering of a shaft when carried above the surrounding surface.

Color. A particle of gold in the pan.

Concentration. The removal by mechanical means of ore from the gangue or slime.

Contact. The plane of meeting of two formations.

Contact Vein. A vein along the plane of contact of two dissimilar formations, consequently separating the two formations. *Von Cotta*, 28.

Copper. A metallic element; red; fusing point 1996° Fahr. Symbol Cu. Atomic weight 63.5. Specific gravity 8.9.

Cost-Book Company. A system of mining partnership local to Cornwall and Devon.

Country Rock. The rock beyond the sides of a lode. The strata between or across which the lode is found.

Course of Vein. Its strike. The horizontal line on which it cuts the country rock.

Coyoting. Spasmodic irregular surface mining.

Cradle. A rocker. A short trough for washing gold.

Cribbing. The timber lining of a shaft, winze or mill-hole. The term is applied to rough or light timbering as distinguished from solid set-work.

Cropping Out. The rising of layers of rock to the surface.

Cross Course. An intersecting vein.

Cross Cut. A level driven across the course of a vein. A short tunnel.

Cut. To intersect a vein. **OPEN CUT.** A horizontal opening at the surface not reaching cover.

Dead Riches. Base bullion.

Dead Work. The developing of a mine preparatory to stoping. *See page 154.*

Debris, The loose fragments detached from the bed rock and washed down, to which the term slide is more appropriate; waste rock of any kind. *French.*

Deep. The lower portion of a vein.

Denouncement. The Mexican or Spanish equivalent to "location and record of a claim."

Descension-Theory. The theory that veins were filled from above.

Diggings. Placers. *Amer.*

Dike. A vein of non-mineral bearing rock. A fissure filled with barren material.

Diluvium. A deposit of loose boulders, earth, &c., attributed, geologically, to deposition from water.

Dip. The line of declination of strata. *Bainbridge.*
Yale. The angle which a lode makes with the plane of the horizon. *Von Cotta*, 26. The departure of a vein from the perpendicular or from the horizontal.

Ditch. An artificial water course, flume or canal, with or without natural channels.

Divining Rod. A witch-hazel rod used in prospecting for lodes. *Law v. Grant*, 7 M. R., 57.

Drift. An underground passage driven horizontally on, or with, the vein.

Downcast. A ventilating shaft with descending current of air.

Dump. A deposit, or place of deposit, of waste rock or tailings.

Elvan Course. A plutonic dike. *Lyell. Argall. Cor.*

Exploitation. The active working of a mine as distinguished from prospecting. *French.*

Eye. The top of a shaft.

Face. Synonymous with breast.

Fathom. A space 6-feet forward and 6 feet vertical with the width of the vein. *Corn.*

Fault. A dislocation of the strata. *Bainbridge. Yale.* The dislocation of a vein from its original position; a heave; a throw. *Von Cotta, 29.*

Feeder. A small vein starting from some distant point and running into a main lode. It is practically synonymous with spur. *See Bainbridge, 2.*

Feldspar. A vitreous crystalline constituent of granite, gneiss, porphyry and many other rocks.

Fissure Vein. A fissure or crack in the earth across its strata, filled with mineralized matter.

Float. Loose quartz detached from the vein and found below it.

Float Ore. Masses or particles of ore detached from the vein and found below it. *See 9 M. R., 600.*

Flookan. A soft decomposed cross-course. *Cornish.*

Floor. The rock underlying a horizontal vein or deposit.

Flume. A ditch carried in frame-work on or above the surface.

Foot-Wall. The under wall of the vein.

Forfeiture. The loss of possessory title as the result of abandonment or the failure to comply with the conditions under which the title was held.

Gad. A small pointed wedge.

Galena. A sulphide of lead ; when not amorphous, is crystalized on the cubic system ; when pure contains 86 per cent. lead, 14 per cent. sulphur. Carries silver in greatly varying quantity.

Gallery. A level or drift ; applied chiefly to collieries.

Gangue. Crevice material ; vein matter ; the base material forming the matrix of the ore.

Gash Vein. A vein which continues for practical purposes only a short distance below the sod, generally narrowing as it descends.

Geode. A rounded nodule of stone containing a cavity studded with crystals or mineral matter ; the cavity in such nodule.

Gneiss. A rock composed of the same constituents as granite, but foliated or stratified.

Gob Fire. Fire in collieries produced by spontaneous combustion.

Gold. A metallic element ; bright yellow ; specific gravity, 19.34 ; fusing point 2016 degrees Fahr. Almost invariably found native associated with a variable percentage of silver. Symbol Au. Atomic weight 196.6. One ounce pure gold coined in U. S. dollars is worth \$20.67.

Gossan. *See Iron Hat.*

Grass. The surface over a mine. *Cor.*

Grass Roots. A term used where a working is started from or worked up to surface. *Amer.*

Gouge. The selvage; a clay streak found following a wall, or a slip or an ore measure.

Granite. A plutonic crystalline rock composed of feldspar, quartz and mica.

Grub-Stake. Provisioning a prospector on a bargain to share his discoveries.

Hanging Wall. The upper wall of a vein.

Heading. The breast or face of a working.

Headings. The mass of gravel and pay dirt above the head of a sluice.

Heave. The horizontal dislocation of one lode by another.

High Explosives. Those of greater detonating force than black powder.

Horse. A mass of country rock between the enclosing walls of a vein. To constitute a Horse, "It is necessary that the walls should converge about the mass below and at both ends, but the greatest known horses do not converge over head. The two walls coming to the surface are in some instances 1,000 feet apart." *Testimony of Clarence King in the Dives Case.*

Hudge. An iron bucket for hoisting.

Hydraulics. That method of placer mining where the gravel is washed by a stream operating under hydraulic pressure.

Hungry. Barren.

Impregnation. A metallic deposit having undetermined limits in no way sharply defined. *Von Cotta, 87.*

Incline Drift. A drift run at an incline to subserve the drainage. (2) A misnomer applied to a slope sunk upon a deposit having slight departure from the horizontal.

Infiltration Theory. That which refers the origin of the ore to the deposit of mineral from water holding it in solution.

Injection Theory. That which refers the origin of the ore to the introduction of igneous fluid.

In Place. *In situ.* Words used in Section 2329 of the U. S. Revised Statutes, qualifying the words "quartz or other rock," and to distinguish lode from placer claims. *See page 96.*

Iron Hat. (*Eisen Hut.*) The outcrop of a lode, it being usually colored by the decomposition of the iron. *German. Von Cotta, 38.*

Jig. A machine for concentrating ore by means of sieves. *Cornish.*

Jump. To take forcible possession of a claim. 2. To relocate abandoned property.

Jumping Act. *See page 195.*

Kibble. A kind of hoisting bucket. *Cornish.*

Lagging. Poles or small timbers used for spanning from one stull-piece to another, for cribbing mill-holes, and for lining behind the timbers of a shaft.

Lead. An objectionable form of the word lode.

Lead. A metallic element; bluish white; fusing point 617° Fahr. Symbol Pb. Atomic weight 207. Specific gravity 11.30. Galena and carbonates are its most common ores.

Ledge. A term in use on the Pacific slope synonymous with lode. *See p. 96.*

Length. A certain portion of a vein when taken on a horizontal line on its course.

Level. A drift along the vein: the word generally used where there are a series of drifts, as first level, second level, &c.

Little Giant. A jointed iron pipe and nozzle decreasing in diameter with the increase of the hydraulic pressure; used in placer mining.

Location. Those successive acts by which a claim is appropriated. (2) The claim itself. *Amer.*

Lode. An aggregation of mineral matter containing ores in fissures. *Von Cotta*, 26. A vein of metallic ore. A ledge. *Cornish.* See p. 95.

Man Hole. An opening large enough to permit access between two workings.

Matrix. (Of the lode): The country rock in which the vein is found. (Of the ore): The rock or earthy material enclosing the ore; the vein-stone.

Metallurgy. The art of working metals, including smelting, refining, and parting them from the ores.

Mica. One of the constituents of granite. When separately crystallized is found in clear laminated plates. Found in the lode as well as in the matrix of the lode.

Mill-Hole. A passage left in the stope for throwing down rock and ore.

Mill Run. The returns of a lot of ore; the assay of ore in quantity as distinguished from a specimen assay.

Mine. Any excavation made for mineral. (2) An open as distinguished from an untouched deposit. (3) Underground as distinguished from superficial workings or quarries.

Miner's Inch. Statutory definition, Gen. Statutes, § 3472.

Moyle. A drill or short bar sharpened to a point, used in cutting hitches and in broaching.

Nodule. A small rounded stony concretion.

Open Cut. A longitudinal surface working not entering cover.

Operator. One who works a mine either as owner or lessee.

Ore. The mechanical or chemical compounds of the metals with baser substances.

Ore Reserves. The ore body where exposed ready for stoping.

Outcrop. That portion of a vein appearing at the surface.

Output. The gross produce of a mine.

Pan. An iron basin used in gold prospecting.

Patch. A small placer claim outside of the main gulch.

Pay Rock. The lode material in which the mineral or pay is found. *See Quartz.*

Pay Streak. The ore body proper, or the thin seam of decomposed material which takes its place and preserves the continuity of the ore body.

Pent House. A shed or horizontal barricade across one end of a shaft, made of strong timbers loaded with rock to protect against any accidental fall from above. *Corn.*

Pinch. The narrow space where the walls come close together.

Pit. A shallow shaft.

Pitch. The dip of a lode.

Placer. A deposit of gold not in place: applied to all classes of gold deposit, including cement and channel claims, except lodes in place. For special meaning under Section 2329 U. S. Rev. St., see page 117, and *Gregory v. Pershbaker*, 14 Pac. 401.

Plat. A small chamber on the side or sole of a level where it intersects a shaft, made to facilitate dumping. Where it is cut in the sole it is called a trip-plat. *Corn.*

Pocket. A detached ore body; a nest of ore.

Pockety. A term applied to a mine where the pay ore occurs in small detached bodies with intervals of poor ore or barren material. The word implies a slur on the mine. *Paull v. Halferty*, 9 M. R., 149.

Porphyry. A general term including such plutonic rocks as exhibit well formed crystals, usually of feldspar, in a finely granular or compact base of the same. *Gr.*

Porphyritic Granite. A base of granite containing prominent crystals of feldspar.

Prospecting. A search for deposits; applied both to the seeking of undiscovered veins and to the investigation of the value of known veins by exploration.

Pyrites. (White) A sulphide of iron. (Yellow) A sulphide of copper. *Gr.*

Quarry. Any open work in rock on a plan of excavating the entire mass, as distinguished from working a seam or vein by shafts or approaches under cover.

Quartz. Silica. A constituent of granite. The free gold of California being found in quartz, the word was applied to the gangue of such lodes and so to other forms of vein matter, until it is now used vaguely to mean the ore, the float, the gangue, or that part of the gangue which indicates the pay streak. In the Acts of Congress it is used

with the word rock (quartz or other rock) in the sense of pay rock.

Quicksilver. Mercury.

Raise. A shaft or winze which has been worked from below.

Rifle Blocks. Cross sections of timber set on the floor of a sluice, with irregular spaces between, in which the gold settles. *American.*

Rise. See *Raise*.

Reef. An Australian term for lode or ledge.

Rob. To gut a mine: to work for the ore in sight without regard to supports or any future considerations.

Rocker. See *Cradle*.

Roof. The stratum or rock overlying a deposit, or flat vein.

Royalty. The dues to the lessor.

Rusty. Oxidised. Ore coated with oxide. Applied to gold which will not easily amalgamate.

Scale. A loosened fragment of rock threatening to break off and fall.

Schist. Crystalline or metamorphic rock with slaty structure: usually carrying mica, sometimes argillaceous.

Segrégations. All those aggregations of ore having irregular form but definite limits. They differ from beds and lodes by the irregularity of their form; from impregnations by their definite limits. *Von Cotta, 81.*

Selvage. A lining; a gouge; a thin band of clay often found in the vein, upon the wall.

Set. Portion of ground taken by a tributer.

Shaft. A pit sunk from the surface; an opening more or less perpendicular sunk on, or sunk to reach the vein.

Shift. A miner's turn or spell of work. *Webster.* Two shifts imply 16 or 20 hours work; three shifts imply 24 hours work.

Sill. A windlass frame.

Silver. A metallic element; the whitest of the metals; specific gravity, 10.53; fusing point, 1873°; symbol, Ag.; atomic weight, 108. 1 oz. pure silver coined in U. S. dollars is worth \$1.2929, gold.

Silver Gance. An ore; when pure, contains 87 per cent. silver and 13 per cent. sulphur.

Skip. A square hoisting bucket running on guides, or in grooves.

Slickensides. Smooth, polished portions of the wall or of some vertical plane in the lode, caused by friction. It may occur on the ore itself. *German.*

Slide. One kind of fault—the vertical dislocation of a lode.

Slide. The mass of loose rock overlying either lode or country.

Slope. An opening upon the inclination of the vein.

Sluice. A series of boxes set in line and floored with riffle blocks.

Smelting. The reduction of metals from their ores in furnaces. It is a form of the word *melt*. In smelting the ore is melted. In other processes it is roasted.

Sole. The floor of a horizontal working.

Sollar. Any platform or wooden floor or covering in a working. *Cornish.*

Sough. A drain. *Eng.*

Spar. A general term applied to rock with distinct cleavage and luster.

Spur. A branch or off-shoot to a larger vein.

Spiling. Timbering used in quicksand or loose ground where lathes are driven behind timbers and kept flush with the heading.

Stamps. Machines for crushing ores by vertical stroke.

Stope. The working above or below a level where the mass of the ore body is broken. *Corn.*

Stoping. The act of breaking the ore above or below a level; when done from the back of the drift it is called over-hand or back stoping; when from the sole it is under-hand stoping.

Stratum. A bed of rock or earth of any kind. *Dana.* The plural is *strata*.

Strike. The extension of a lode or deposit on a horizontal line. *Von Cotta*, 19. Synonymous with *trend* and *course*.

Stulls. Cross timbers at the foot of a stope.

Sublimation Theory. That which refers the filling of fissures to material deposited from ascending steam, or by condensation from a gaseous condition.

Sulphide. The chemical union of sulphur with a metal.

Sulphuret. A sulphide. Sulphide is the more recent and approved term.

Sump. The extension of a shaft, forming a pit for the collection of water. *Corn.*

Syndicate. An association or council of persons; in use since the war, to designate any combination formed to carry out a large financial enterprise.

Tackle. The windlass, rope and bucket. *Corn.*

Tailings. The refuse discharged from the tail or lower end of a sluice, or washed from any sort of placer working.

Triouters. Miners who work a *set*, or piece of ground, taking the proceeds as wages, after royalty deducted; but who work under direction of the owners and hold no possession or title as lessees.

Trouble. A fault.

Tunnel. A horizontal excavation starting at the surface and driven across the country for the discovery or working of a lode or lodes.

Tut work. Work paid for by the foot as distinguished from tribute work.

Upcast. A ventillating shaft where the air ascends.

Veins. Aggregations of mineral matter in fissures of rocks. *Von Cotta*, 26. 4 *Saw.*, 310; *Bainbridge*, 2. The word vein has a broader scope than lode, including non-metallic beds. *See p.* 92. It is also applied, in working, to smaller zones threading the greater deposit. *See Vena and Veta.*

Vena. The branches of the veta, or main vein. *Span.*

Veta. A main vein. *Span.*

Vng. A cavity.

Wall. The plane of the country where it touches the side of the vein, when used with reference to lodes. The side of a level or drift, when used with reference to the workings *See p.* 105.

Wheal. A pit or hole in the ground. A mine. The names of most mines in Cornwall are preceded by the word *Wheal*. Old form *Huel*. *Cornish*.

Whim. A machine for raising the bucket by means of a revolving drum.

Whip. An apparatus for raising the bucket with rope and pulleys, by horse power on a straight drive.

Winze. A shaft sunk from a level; not necessarily connecting two levels.

Zink. A metallic element; blueish white; fusing point 773° Fahr; generally found as a sulphide (blende) or as a carbonate (calamine). Atomic weight, 65.2; specific gravity, 8.9.

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